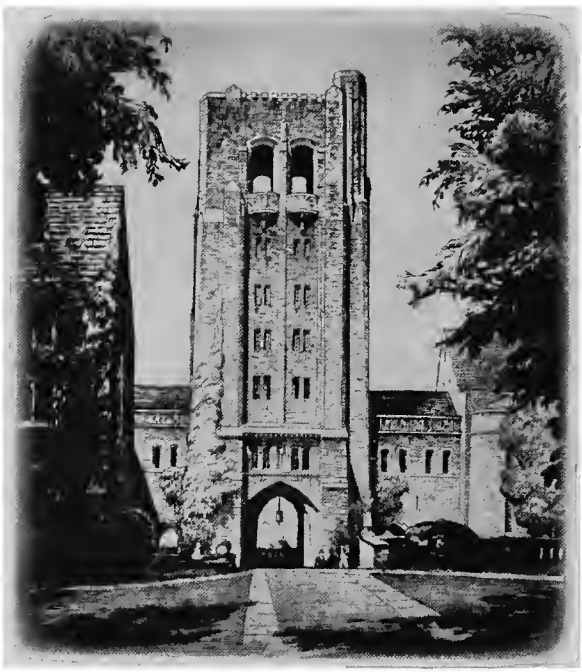

RULES OF LAW

FOR THE

CARRIAGE AND DELIVERY

OF

PERSONS AND PROPERTY BY RAILWAY.

WITH THE

LEADING RAILWAY STATUTES AND DECISIONS OF ILLINOIS, INDIANA, MICHIGAN, OHIO, PENNSYLVANIA, NEW YORK AND THE UNITED STATES.

PREPARED FOR RAILWAY COMPANIES AND THE LEGAL PROFESSION.

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CHICAGO:

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works on railways, carriers, contracts and bailments; and because the decisions given, seem sufficiently to sustain, amplify and explain them, and to show their application. It will not be expected that the first edition of such a work will be free from defects; and I invoke a friendly judgment on occasional departures from the general plan of the work; and matters in which improvements either of form or of substance might be made.

A distinct knowledge of duty and liability, naturally induces care and fidelity; and I cannot resist the conviction, that a familiarity with the subject-matter of this treatise, by the non-professional persons for whose use it is, in part, designed, would prevent many of the losses and accidents which now occur; and largely increase the efficiency and safety of the railway system of the country.

To my professional brethren I submit the result of my labors, with the hope that it may be found sufficiently useful in the law office and at the bar, to secure the grateful reward of their approval.

CHARLES C. BONNEY.

CHICAGO, August 16, 1864.

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RAILWAY LAW.

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CHAPTER I.

THE CARRIAGE OF PASSENGERS — GENERAL RULES.

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1. *The Carrier's Contract and Control.*

The carrier of passengers only undertakes to transport them without any negligence. He does not, like the carrier of goods, insure absolutely, against everything but the act of God or a public enemy. The reason is, that the carrier has an absolute control of the goods, but only a qualified control of the passenger.

2. *Payment of Fare — Public Policy.*

There has been some conflict of cases on this point, but the better opinion seems to be, that whether fare be paid, or the transportation be gratis, makes no material difference — and the reason is, not so much that a contract, resting on sufficient consideration has been made, as that *public policy* will not allow negligence which has caused injury, to go unpunished, because the friendship or interest of the carrier has led him to offer his passenger a free ride.

3. *Duty and Authority of Conductor.*

It is the duty of the conductor to receive all passengers; except that he may exclude persons of

bad behavior, and all who refuse to conform to reasonable regulations, seasonably communicated. Persons known to be of corrupt character, prostitutes, vagrants, felons, and the like, and those whose design can be shown to be the injury of the carrier in his business during his journey, or by means of it, may lawfully be refused. But if a person of supposed bad character has paid his fare, and taken his seat, it would be imprudent and unsafe to interfere with him, so long as he conducts himself in an orderly manner.

4. *Providing Means of Transportation.*

The carrier must, with due diligence, provide suitable means of transportation. If an extraordinary number of passengers apply for transportation, the carrier is entitled to a reasonable time to provide additional cars; and if the next train will depart nearly as soon as other cars would reasonably be supplied, the carrier may lawfully require those who cannot be accommodated, to wait till the following train; but he should be careful then to provide sufficient cars to accommodate all who may apply, for if he be guilty of negligence, and a passenger be detained thereby, an action at law lies for the injury which may be occasioned by that neglect.

5. *Treatment of Passengers.*

All the passengers should be treated with equal civility, and provided with equal accommodations. All who pay alike should be treated alike: but this rule does not forbid any special acts of courtesy, prompted by friendship; nor does it in anywise conflict with the common custom to reserve the best cars and the most desirable seats for women and children, and their attendants. On the contrary, it may almost be declared the legal duty of a conductor to see that where the train is crowded, the young and the strong be required to give place to the aged and the weak; but he ought to be careful not to receive such passengers, after the train is so full that they can be accommodated only by displacing others who have regularly paid their fare and taken their seats. All are to be treated with every reasonable courtesy and convenience; but what would be a full compliance with this rule toward an able-bodied man, might be altogether insufficient toward a lady, a child, or an infirm person. The carrier has no right to overload, and crowd passengers. When passengers take their seats, they are entitled to occupy them, as against the carrier and subsequent passengers.

6. *Conformity to Time-Tables and Regulations.*

It has been decided that a railway company is liable for non-conformity to its published time-tables and like regulations. If there be a custom of the carrier to allow certain intervals for refreshments, he has not the right at his pleasure, without reasonable notice, to vary that custom; for this custom may have been the reason why the passenger selected the carrier who established it, in preference to some other.

7. *Injury of mere Strangers.*

The carrier is also liable for any injury that may happen through his negligence to mere strangers, because it is the contract of the corporation *with the State*, that it will transact its business with a high degree of care for the person and property of every one along the line it is allowed to monopolize.

8. *Injury of Stockholder.*

The fact that the passenger is a stockholder in the railroad company, riding gratuitously, will not affect his right to recover damages for any injury he may receive through the negligence of persons in charge of the train.

9. *Negligence of Injured Party.*

It has sometimes been decided that a party injured, forfeits his entire claim to redress, if his own negligence has contributed in the slightest degree to produce the injury. But it would be more safe to say, that where negligence of the injured party is charged, it is for the jury to determine the mixed question of law and of fact, whether the party damaged has so conducted himself that he ought not to recover; and if he ought to have a verdict, what amount should be allowed him for his damages.

10. *Right to make Regulations and limit Liability.*

A carrier of passengers may lawfully make any reasonable rules and regulations for the conducting of his business, and passengers will be bound to conform thereto, on proper notice. But a carrier cannot, by any mere notice, rule, regulation, or implied matter of any sort, limit the general measure of his liability for *negligence.* It is generally conceded that he may do this by an express contract, but the common carrier is regarded by the law as an important and necessary *public servant*, and the public policy of the State, will not allow him to obtain a privilege of being careless of the

person or property of a citizen, by any *ex parte* proceedings, crowded upon him in the hurry of buying tickets and checking baggage.

11. *Risks taken by Passengers.*

Every passenger takes upon himself all the unavoidable peril and inconvenience of the mode of travel he selects; and he, like the carrier, is bound to use all reasonable prudence for the prevention of accidents and injuries. He must be constantly attentive to the rules and regulations of the carrier, and especially to the warnings and signals given for his protection; and must yield thereto a prompt and prudent compliance.

12. *Buying Tickets.*

The company may charge those who neglect to buy tickets, a higher rate of fare, but to justify the company in making this discrimination in the fare, against a passenger who neglects to purchase a ticket at the company's office, the company must see to it that the fault was not that of its own agent, instead of the passenger. To justify this discrimination, every reasonable and proper facility must be afforded the passenger to procure his ticket. It must furnish a convenient and accessible place for

the sale of tickets, with a competent person in attendance, ready to sell them, and this should be open and accessible to all passengers for a reasonable time before the departure of each train, and up to the time of its actual departure.

13. *Key to the Law of Common Carriers.*

The key to all the leading doctrines of law upon the subject under consideration, is to be found, not in the contract between the carrier and his passenger, but in that solemn obligation of higher dignity, *the contract between the common carrier and the State.* This explains, alike the extraordinary privileges conferred, and the commensurate duties imposed on railway companies by the law of the land.

CHAPTER II.

PASSENGERS' BAGGAGE — GENERAL RULES.

1. *The Contract of Baggage.*

The usual contract to carry the passenger, includes a contract to carry his ordinary baggage. In other words, a contract to carry the usual luggage of the passenger, is implied from the common course of that business.

2. *What is included in the Terms.*

Baggage includes everything which the passenger may *reasonably* take on his journey for his pleasure, protection, comfort or convenience; but it does not include articles which are not for the use of the traveler as such. It is impossible to lay down any general rule by which the cases that arise in the course of human experience can be determined. Each case must be governed by its own circumstances; and when questions arise, they will involve, in most cases, mixed matters of law and of fact, and must be solved by the jury, under the direction of the court. All things reasonable, are permitted between the parties — all things necessary for the protection of the public, are imperatively enjoined by the law. In the determination of a particular case, all the circumstances are to be considered — in the establishment of rules of law for the conduct of business in which the whole community have an interest, the individual parties to the controversy are not regarded by the courts.

3. *Articles enumerated from adjudged Cases — the Rule for Passengers — Merchandize.*

Cases have been decided, in which writing apparatus, books for instruction or amusement by

the way, hunting or fishing tackle, pistols, carpenters' tools, wearing jewelry, reasonable sums of money and bank bills, and the like, have been held within the legal meaning of the term baggage. But the term *baggage* does not include an unreasonable and obviously unnecessary amount of money, wearing apparel, or other articles such as have been named; nor does it extend to merchandize, or to samples of goods. The rule for the guidance of the passenger, in this behalf, is to take *as baggage*, simply what his convenience may require; carefully avoiding everything which would seem like an attempt to impose an unwarrantable burden upon the carrier. What is properly freight, must be carried and paid for as such.

4. *Payment of Fare.*

It need not appear that the passenger has paid his fare; for, in the first place, payment of fare will be presumed; and, in the second, if the passenger has been carried, and has not paid his fare, he is liable to an action or to detention of his baggage for his default.

5. *Lien for Passage Money.*

The carrier has a lien upon the baggage for the unpaid fare. It is hardly necessary to say, that the carrier has no right to detain the person of the

passenger, nor his wearing apparel in actual use; and, of course, if the carrier part with possession of the baggage, before payment, his lien is gone, and he must resort to the ordinary action at law.

6. *Custody of Baggage — Information of Contents.*

The baggage must be fairly committed to the custody of the carrier, as the usual course of travel, and the nature of the articles comprising it, require; and the passenger ought, in good faith, to give the person who receives his baggage, any information thereof, which may be necessary or expedient for its sure and convenient transportation. It is not strictly the duty of the passenger to inform the carrier of the contents of his baggage, unless inquiry thereof be made; but if this be done, then the passenger must answer truly.

7. *Taking to Passenger's Seat.*

Those things which are commonly taken by passengers to their seats, may lawfully be carried in that manner; in which case the liabilities of the carrier are somewhat diminished, and the duties of the passenger materially increased, because, under these circumstances, the carrier, instead of keeping the absolute control of the property, commits its

immediate custody to the passenger himself. Here the rule is, that each must use all the diligence which the circumstances allow, for the protection of the property. The carrier is not absolved from his liability by the taking of such articles to the traveler's seat; the carrier still has a qualified control of the goods, and it is his duty to exercise this control so far as may be necessary for their carriage in safety.

8. *Notice that the Carrier will not be Liable.*

Although cases may be found somewhat to the contrary, it is well for common carriers to understand that the rule is now "well settled," that their general liability cannot be restricted by any mere notice they may give. Carriers may make any reasonable requisition, to insure the proper fulfillment of their duty; and after sufficient notice, may enforce such requisition; but their rules and regulations must be consistent with, not contrary to, the great doctrines of the law, which underlie their duty.

9. *Delivery at End of Journey — Presumption in Case of Loss — Warehousing.*

It is the duty of the carrier to deliver the baggage to the passenger at the end of the journey; and of the passenger to receive it within a reasonable time.

Delivery upon a forged order or otherwise to a wrong person, will not protect the carrier; but to excuse him for the non-transportation and non-delivery of property, the failure must be occasioned by act of a public enemy, or by some inevitable accident, which no human sagacity and power could have foreseen and prevented. Under this rule, a common carrier is not liable for a loss by hurricane, tempest, lightning or frost, unless the negligence of the carrier contributed in some degree to produce the result. If the passenger unreasonably delay his application to receive his baggage, the carrier is discharged from the duties imposed upon him in that capacity, and subjected to the milder obligations imposed by the law on warehousemen. A warehouseman is bound to take only common and reasonable care of the property committed to his charge. He is not liable for losses by theft, fire, or the like, unless it appear that such loss might have been prevented by ordinary care, skill, and diligence. The passenger cannot be required to expose himself in a tumultuous crowd, or otherwise to take unusual risks, or make extraordinary efforts to claim his baggage, but is entitled to a reasonable and convenient opportunity. If baggage be lost, after it has been received by the carrier or his agent, the presumption of law is, that the loss

occurred through his negligence; and the burden of proof is on him to establish, if he can, the contrary.

10. *Transportation over other Lines of Carriage.*

Where different railways, forming a continuous line, run their cars over the whole line, and sell tickets for the whole route, and check baggage through, an action lies against either company for the loss of baggage. The English courts regard the company receiving the passenger and baggage, as carriers for the entire route. There are American cases to the contrary, but the Supreme Court of Illinois have declared in favor of the English rule; and this rule is so evidently calculated to promote commercial intercourse, and protect the traveling public, that we may expect it to be adopted elsewhere throughout this country. It seems a change of cars along the route would make no difference.

11. *Baggage Check.*

A check is not only *prima facie* evidence that baggage was delivered to the company, but it is also evidence that the party holding it has purchased the rights of a passenger. The delivery of a

check to a passenger, is intended to relieve him from all care and superintendence of his baggage while on its journey, and devolves such care upon the agents of the several roads over which it passes, and must be considered as *prima facie* evidence of the delivery of the baggage.

CHAPTER III.

TRANSPORTATION OF PROPERTY — GENERAL RULES.

1. *Duty to Receive and Carry Property.*

The carrier must take the goods of all who offer; must care for, transport, and deliver them. But he may temporarily decline them, if his present means of carriage are adequate for ordinary business,

and are then fully employed; or if, from their nature, he cannot carry the goods without danger to them, or to other property, or to himself; or if they are not such goods as it is his *business* to carry.

2. *Time, Place, and Mode of Receipt.*

The carrier must receive property for transportation in a convenient way, and at reasonable times and places. He must afford the public all reasonable facilities for the transaction of the business in which he undertakes to serve them.

3. *Compensation — Lien.*

The carrier is entitled to a *reasonable* compensation for his service. He may demand such compensation according to the *usual course* of the business. He has a *lien* on the property for his proper charges, and by virtue thereof may detain the property to compel payment. If this be ineffectual, and there be no statute authorizing a sale, he may generally obtain a remedy under the direction of counsel, but a general rule cannot well be given for such a case.

4. *Instructions from Consignor.*

If the consignor mark goods "with care," "keep dry," "this side up," or the like, all such

reasonable directions must be observed by the carrier.

5. *Extent of Liability.*

The common carrier is liable for all loss of, or injury to, the goods under his charge as such carrier, unless it happen from the act of God or of a public enemy. This rule makes him, generally, an insurer of the safe delivery of the property. He is responsible, wherever it is *possible* that the loss was caused either by his negligence or his design.

6. *Delivery to Consignee.*

The carrier must deliver the property to the *consignee*, without *unreasonable delay*, according to the *usual course* of business, at the place of *delivery*. The delivery, like the receipt, must be at reasonable times and places, and according to the usual mode of business. What is reasonable must be determined by the circumstances of the case, or by an established usage. The mode of carriage — the nature and size of the parcel — the value of the property — its liability to injury, must all be considered. Where the delivery is not to the consignee or to his agent, immediate notice must be given. The GOLDEN RULE governs the whole case. The aim of the law is exact justice.

7. *Course if Consignee Dead, Absent, or Refuse.*

If the person to whom the goods are consigned be dead, absent, or unable to receive them, or refuse so to do, "the carrier must keep them for the owner, with due care." But in such case, his contract as carrier is at an end; and his continuing liability is that of a warehouseman, which binds him to the exercise of reasonable care. Or, he may deliver them to a public warehouseman, and give notice of having done so, to the consignor, and thus terminate his liability.

8. *Conflicting Claims to the Property.*

In case of conflicting claims, the carrier should require evidence from all parties of their alleged rights; and in case of doubt, he may require indemnity from the party to whom he delivers the property.

9. *Liability for Carriage over other Lines.*

A common carrier may be liable for the transportation of goods beyond the terminus of his own route. Where several roads do a common business, and share the profits, all of them are liable for a loss on any part of the whole route. The weight of authority in this country, seems to be

that the mere receipt of property directed beyond his own terminus, does not make the carrier so liable; but that to create such liability, there must be an undertaking, express or implied, to transport the property over the whole route. The bill of lading commonly determines the question.

10. *Railway Company may keep Warehouses.*

A railroad company may assume the double character of carriers and warehousemen; and when they do this, they have a right to charge a reasonable compensation for warehouse service, before the contract of transportation begins, or after it has been discharged. But the carrier cannot act in both capacities as to the same property, at the same time. Property taken to be carried, is held by the carrier as a carrier; if received to store for future directions, the carrier holds it in the meantime, as a warehouseman. See Delivery.

11. *Partial Loss.*

In case of partial loss, the residue must be tendered in good condition, and with a sufficient identification. The consignor is not bound to take any and every remnant of his goods in whatever condition it may be identified and offered to him

short of absolute destruction. Common sense, and good conscience, point out the true rule.

12. *Limiting Liability.*

No notice or contract can protect the carrier against liability for *negligence* or *misconduct.* In other respects his liability may be modified by contract, in which term is included an actual notice assented to by the consignor. But the carrier can no more arbitrarily impose new terms and conditions of transportation, without consent of the patron, than he can altogether refuse to carry the goods.

13. *Public Policy.*

PUBLIC POLICY is a universal rule of law, for the promotion of the right, and the suppression of the wrong. It embraces in one complex rule, the conclusions of THE COMMON SENSE OF MANKIND. It enters into every law, and every contract, and exercises a controlling influence in their interpretation and application.

CHAPTER IV.

OPERATING THE RAILROAD — GENERAL RULES.

1. *Condition of the Road and Equipments.*

The law implies a warranty that the road itself is in good traveling order, and fit for use; and that the engine, cars, and equipments, are road-worthy and properly arranged. The engineer, conductor, brakemen, switch tenders, and other

employes, must be competent, careful, and well supervised.

2. *Inspection before each Journey.*

Every officer and agent of the railroad company, should understand and remember that, in the language of the courts, "it most undoubtedly is the duty of the proper person in charge, to make a most careful and thorough examination of the vehicle and equipments immediately previous to each journey."

3. *Not liable for Defects which could not have been Discovered and Remedied.*

The proprietors are not liable for accidents to passengers in consequence of original internal defects, which could not have been discovered and remedied by the closest inspection, care and skill, either at the time of construction or subsequently. When the railroad company and their employes have fully done their duty, then if any accident occur, and injury come thereby, he upon whom the misfortune falls must bear his grievance meekly, for the law can afford him no redress.

4. *Proper Kind as well as Quality of Equipments.*

It is the duty of the proprietors to see that all the furniture of the road is not only of the proper

quality, but also of the proper *kind*. No excellence of workmanship displayed upon a car, could compensate for an unpleasant tendency to run off the track. Both the plan and the execution should be right. If a bridge break, an injured party may not only raise the question whether a competent engineer was employed, but may also inquire whether the proper working plan was adopted, fit materials used, and the work well done.

5. *Running Regulations — Exclusive Passenger, and the like Freight Trains.*

It is the duty of railroad companies to adopt such rules and regulations for the running of their trains, as will insure safety; and having adopted them, they must conform to them, or be responsible for all the consequences of a departure from them. The company, or its officers, have a legal right, not only to regulate the number, time, speed, etc., of trains, but they have also the right to establish trains exclusively for passengers, and exclusively for freight; and to require the public to arrange their business accordingly. In this manner, and to this extent, the common carrier may modify his duty to serve with all convenient speed, those who may apply for transportation of person or property.

6. *Explanation of Cause of Accident.*

The mere fact that an accident has occurred, and damage resulted, makes a *prima facie* case for the injured passenger, or consignor. It is therefore important to be remembered, that the agents of the company should act with such care, and attend to their duties with such assiduity, that if an accident do happen, they may be prepared "to give some explanation of the cause by which it was produced," and to show that full diligence was used on their side.

7. *Not liable to one Agent for Default of another in same Service.*

It is a general rule of law, that the principal is not liable to one of his agents or servants, for an injury sustained by him, in consequence of the carelessness of another agent or servant, while both are engaged in the same service. Attempts have been made to overturn or modify this doctrine, but they have not, thus far, been successful. The agent or servant in fault, is, of course, liable to his injured fellow agent or servant, for the damages which the latter may suffer by reason of his negligence or misconduct.

8. *Statute Regulations not Exclusive.*

A compliance with specific statutory regulations for the display of signs, giving signals, and the like, will not exempt the company from the obligation of using reasonable care in other respects, when the circumstances of the case render it reasonable to use other precautions.

9. *Rule where Third Persons are in the Wrong — Conduct in Time of Peril.*

Engineers and conductors must take care that they do not act without due caution, in cases where they have reason to believe that others are in the wrong. If persons or animals be wrongfully on the track, or elsewhere within the premises of the company, this will not warrant any carelessness on the part of the agents of the corporation. They must still proceed with all the prudence which the nature of the case allows, leaving the parties to the remedies provided by the law. Persons in apparently imminent peril, must exercise all the caution and diligence which the occasion appears to allow. They cannot be held to exercise the same deliberation and care, which might be expected of an employe on the road, whose experience has given him greater self-possession, and fertility of expedients

on such occasions. Less would be required, in such a case, of a child, or a woman, than of a man. The law makes allowance according to the circumstances, and leaves it to the jury to say whether the party acted rashly, and under an undue apprehension of danger. In one word, nothing can excuse any degree of recklessness on the part of any person engaged in operating a railroad.

CHAPTER V.

RAILWAY STATUTES OF ILLINOIS — MISCELLANEOUS SECTIONS OF ESPECIAL IMPORTANCE.

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2. Regulation of trains, and extent of accommodations — damages.
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4. Bells, whistles, and signs.
5. Intoxication of engineer or conductor.
6. Willful injuries made misdemeanors.
7. Above provisions extended to all railroads in Illinois.

II. ACT OF FEBRUARY 11, 1853.

8. Displacing, etc., switch, signal, or rail, injuring track, obstructions, etc., etc., made criminal offenses.

III. ACT OF FEBRUARY 12, 1853.

9. Contracts and connections with other railroads.

IV. ACT OF FEBRUARY 28, 1854.

10. Consolidation of different railroads.

V. ACT OF FEBRUARY 14, 1855.

VI. ACT OF FEBRUARY 14, 1859.

VII. ACT OF FEBRUARY 13, 1861.

VIII. ACT OF FEBRUARY 22, 1861.

I. ACT OF NOV. 5, 1849.

1. *Refusal to pay Fare — Right to expel Passenger.*

If any passenger shall refuse to pay his fare or toll, it shall be lawful for the conductor of the train and the servants of the corporation to put him out of the cars at any usual stopping place the conductor shall select. Sec. 34.

2. *Regulation of Trains, and Extent of Accommodations — Damages.*

Every such corporation shall start and run their cars for the transportation of passengers and property, at regular times, to be fixed by public notice, and shall furnish sufficient accommodations for the transportation of all such passengers and property, as shall, within a reasonable time previous thereto, offer or be offered for transportation at the place of starting, and the junctions of other railroads, and at sidings and stopping places established for receiving and discharging way passengers and freight, and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of tolls, freight or fare legally authorized therefor. Sec. 35.

In case of the refusal by such corporation, or their agents, to take and transport any passengers or property, or to deliver the same, or either of them, at the regular appointed time, such corporation shall pay to the party aggrieved, all damages which shall be sustained thereby, with costs of suit. Sec. 36.

3. *Making up Trains — Penalty.*

In forming a passenger train, baggage, or freight, or merchandise, or lumber cars, shall not be

placed in rear of passenger cars; and if they or any of them shall be so placed, and any accident shall happen to life or limb, the officer or agent who so directed or knowingly suffered such arrangement, and the conductor or engineer of the train, shall each and all be held guilty of intentionally causing the injury, and be punished accordingly. SEC. 37.

4. *Bells, Whistles, and Signs.*

A bell of at least thirty pounds weight, or a steam whistle, shall be placed on each locomotive engine, and shall be rung or whistled, at the distance of at least eighty rods from the place where the said road shall cross any other road or street, and be kept ringing or whistled until it shall have crossed said road or street, under a penalty of fifty dollars for every neglect, to be paid by the corporation owning the railroad, one-half thereof to go to the informer, and the other half to the State; and also to be liable for all damages which shall be sustained by any person by reason of such neglect. SEC. 38.

Every such corporation shall cause boards to be placed, well supported by posts or otherwise, and constantly maintained across each public road or street, where the same is crossed by the railroad on the same level. Said boards shall be elevated so as

not to obstruct the travel, and to be easily seen by travelers; and on each side of said boards shall be painted in capital letters, of at least the size of nine inches each, the words, *Railroad crossing — look out for the cars while the bell rings or the whistle sounds.* But this section shall not apply to streets in cities or villages, unless the corporation be required to put up such boards by the officers having charge of such streets. SEC. 39.

5. *Intoxication of Engineer or Conductor.*

If any person shall, while in charge of a locomotive engine running upon the railroad of any such corporation, or while acting as conductor of any car or train of cars on any such railroad, be intoxicated, he shall be deemed guilty of a misdemeanor — [and punished by fine and imprisonment, in the discretion of the court.] SEC. 40.

6. *Willful Injuries made Misdemeanors.*

If any person shall willfully do or cause to be done, any act or acts whatever, whereby any building, construction, or work of any such corporation, or any engine, machine or structure, or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured or destroyed, the person or persons offending, shall be

guilty of misdemeanor, and shall forfeit and pay to said corporation, treble the amount of damages sustained by means of such offense. SEC. 41.

7. *Above Provisions Extended to all Railroads in Illinois.*

All existing railroad corporations within this State shall respectively have and possess all the powers and privileges, and be subject to all the duties, liabilities and provisions contained in this act, so far as they shall be applicable to their present conditions, and not inconsistent with their several charters; and all railroad companies that are now constructing their roads, may acquire title to lands necessary for that purpose, under the provisions of this act. SEC. 45.

II. ACT OF FEB. 11, 1853.

8. *Displacing, etc., Switch, Signal, or Rail, injuring Track, Obstructions, etc., etc, made Criminal Offenses.*

If any person or persons shall willfully and maliciously displace or remove any switch, signal or rail, of any railroad, or shall break down, rip up, injure or destroy any railroad track, or railroad bridge, or any portion thereof, or place any obstruction whatever on any such rail or railroad track, or bridge, or

switch, or place any false signal upon or along the line of any railroad track, with intent that any person or property, being or passing on and over said railroad, should be injured thereby, every such person so offending, upon conviction thereof, shall be punished by imprisonment in the State Penitentiary not less than one year and not exceeding five years. SEC. 1.

Section Two provides, that if any person, etc. actually suffer any bodily harm, or any property be injured, the penalty shall be not less than three nor more than ten years.

Section Three provides, that in case of loss of life, etc., the crime shall be, murder, and the penalty death.

III. ACT OF FEB. 12, 1853.

9. *Contracts and Connections with other Roads.*

That all railroad companies incorporated, or which may be hereafter incorporated, under the authority of this State, the lines or routes of which railroads may connect with or cross each other, shall have the power to make contracts or arrangements with each other for the use of each other's engines, machinery or cars, as also for the mutual transportation of material, merchandise and passengers upon and along the lines of each other's roads, upon such terms as

may be mutually agreed upon between any such corporations.

IV. ACT OF FEB. 28, 1854.

10. *Consolidation of different Railroads.*

That all railroad companies and plank road companies now organized, or hereafter to be organized, which now have, or hereafter may have, their termini fixed by law, whenever their said road or roads intersect by continuous lines, be, and the same are hereby authorized and empowered to consolidate their property and stock with each other, and to consolidate with companies out of the State, whenever their lines connect with the lines of such companies out of this State. SEC. 1.

The subsequent sections of the act prescribe the mode of the consolidation.

V. ACT OF FEB. 14, 1855.

11. *Fences and Cattle-Guards — when Company must Build and Maintain them — Liability for Damages — Uninclosed Lands — when Land Owners must Erect and keep in Repair — Action for Damages.*

That every railroad corporation, whose line of road, or any part thereof, is open for use, shall, within

six months after the passage of this act, and every railroad company formed, or to be formed, but whose lines are not now open for use, shall, within six months after the lines of such railroad, or any part thereof, are opened, erect and thereafter maintain fences on the sides of their road, or the part thereof so open for use, suitable and sufficient to prevent cattle, horses, sheep and hogs from getting on to such railroad, except at the crossing of public roads and highways, and within the limits of towns, cities, and villages, with openings, or gates, or bars, at the farm crossings of such railroads, for the use of the proprietors of the lands adjoining such railroads, and shall also construct, where the same has not already been done, and hereafter maintain, at all road crossings now existing or hereafter established, cattle-guards suitable and sufficient to prevent cattle, horses, sheep and hogs from getting on to such railroad, and so long as such fences and cattle-guards shall not be made after the time hereinbefore prescribed for making the same shall have elapsed, and when such fences and cattle-guards are not in good repair, such railroad corporation and its agents shall be liable for all damages which shall be done by the agents or engines of any such corporation, to any cattle, horses, sheep or hogs thereon; and when such fences and guards shall have been duly made

and shall be kept in good repair, such railroad corporation shall not be liable for such damages unless negligently or willfully done. No railroad corporation shall be required to fence the sides of its roads, except when such fence is necessary to prevent horses, cattle, sheep and hogs from getting on to the track of the railroad from the lands adjoining the same; nor shall they be required to construct such fences on the sides of their railroads, where the same runs through unenclosed lands lying at a greater distance than five miles from any settlement. Nor shall the said companies be required to erect and maintain said fences through lands where the proprietors of said lands have already erected fences, or agreed with said companies so to do. SEC. 1.

But it shall be the duty of every owner of land adjoining any railroad, who has received a specific sum as compensation for fencing along the line of land taken for the purpose of said railroad, and has agreed to build and maintain a lawful fence on the line of said road, to build and maintain such fence; and it shall also be the duty of every owner of land, adjoining every railroad, who has received compensation for building and maintaining a lawful fence on the line of said road, by way of damages, in the condemnation of land taken for the purposes of said road, under the laws of this State, to build and main-

tain such fence; and if said owner, his heirs, assigns, shall not build said fence within six months after he has been notified to do so by the said railroad corporation, or shall neglect to maintain said fences, if built, such corporation shall build and thereafter maintain such fence, and may maintain a civil action against the person so neglecting to build or maintain said fence, to recover the expense thereof; and such railroad corporation shall not be liable to such owner or owners, their heirs or assigns, for any damages which shall be done by the agents or engines, locomotives or cars, of any such corporation, to any cattle, horses, sheep or hogs of said owner or owners, their heirs, assigns or lessees, coming upon said road, by reason or on account of the failure of such owner or owners, their heirs or assigns, to construct or maintain such fence. SEC. 2.

12. *Penalty of Unlawful Intrusion on Railroad Premises — Injury to Fence, etc.*

If any person shall ride, lead or drive any horse or other animal upon such road, and within such fences and guards, other than at farm or road crossings, without the consent of the corporation; or who shall pull down, tear down, or otherwise render insufficient to exclude stock, any part of said fencing, he shall be liable to a penalty of not less than ten

nor more than one hundred dollars, to be recovered in an action of debt, before any court having jurisdiction in such cases, in the name of the company or corporation owning such road, and for its use, and also shall pay all damages which shall be sustained thereby to the party aggrieved. SEC. 3.

VI. ACT OF FEB. 14, 1859.

13. *Fraudulent Neglect to Cancel or Return Railroad Ticket — Stealing or Embezzlement thereof — Fraudulent Issue of same.*

That when any person in the employ of any railroad company, whether such company is incorporated by this or any other State, shall fraudulently neglect to cancel or return to the proper officer, company or agent, any coupon or other railroad ticket, with the intent to permit the same to be used in fraud or injury of any such company; or if any person shall steal or embezzle any such coupon or other railroad ticket, or shall fraudulently sell or put in circulation any such ticket, any person so offending shall, upon conviction thereof, be punished by imprisonment in the penitentiary, for the term of one year. SEC. 2.

[Every servant, officer or person employed in any public department, station or office of the gov-

ernment of this State, or any county of this State, or in any office of a corporate body, who shall embezzle, steal, secrete or fraudulently take and carry away any money, goods, chattels, effects, book or books of accord or of account, bond or bonds, promissory note or notes, bank bills or notes, or any other writing or security for the payment of money or property, of whatsoever description it may be, being the property of said State, county or corporate body, shall, on conviction, be punished by confinement in the penitentiary for a term not less than one year nor more than ten years. Rev. Stat., Chapter 30, Division 7, Section 66.]

14. *Breaking into Railroad Car made Burglary.*

If any person or persons shall willfully, maliciously or forcibly break and enter any school-house, or freight or passenger railroad car, with intent to commit robbery, larceny, or other felony, he shall be deemed guilty of burglary, and upon conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one year nor more than ten years. SEC. 3.

VII. ACT OF FEB. 13, 1861.

15. *Unclaimed Freight — Railway Company may Advertise and Sell on certain Conditions.*

Whenever freight forwarded upon any railroad to any point in this State, shall remain unclaimed, and the legal charges thereon unpaid, for the space of six months after its arrival at the point to which it shall have been directed, and the owner or person to whom the same is consigned cannot be found, upon diligent inquiry, or, being found and notified of the arrival of such freight, shall neglect to receive the same and pay the legal charges thereon, for the space of three months, then if there be no warehouse at the point to which said freight shall have been forwarded, which will receive the same and pay the legal charges thereon, it shall be lawful for such railroad company to sell such freight, at public auction, after giving ten days notice of the time and place of said sale, by posting up notices thereof in three public places in the county where such sale shall be made, and out of the proceeds of such sale to pay the legal charges on said freight, and to pay the overplus, if any, to the owner or consignee of such freight, on demand. SEC. 1.

16. *Act extended to all Transportation Companies.*

The provisions of this act shall apply to all steamboat and transportation companies, or other corporations, who act as common carriers. SEC. 2.

VIII. ACT OF FEB. 22, 1861.

17. *Lien of Operatives and others on Property of Railway Companies, for Labor, Materials, Supplies, etc.*

That all persons who may have furnished, or who shall hereafter furnish to any railroad corporation existing under the laws of this State, any fuel, ties, materials, supplies, or any other article or thing, necessary for the construction, maintenance, operation or repair of such roads, by contract with said corporation, or who shall have done and performed, or who shall hereafter do and perform, any work or labor, for such construction, maintenance, operation or repair, by like contract, shall be entitled to be paid for the same as part of the current expenses of said road, and in order to secure the same, shall have a lien for three months after the right of action accrues, upon all the property, real, personal and mixed, of said railroad corporation, as against all

mortgages or other liens which accrued after the commencement of the delivery of said articles, or the commencement of said work or labor. SEC. 1.

In case, within the three months hereinbefore limited, the party furnishing such article or thing, or performing such work or labor, shall commence suit for the recovery of such debt, in any court of record, then the lien hereby created, shall continue until the same has been decided by said court; and, if the judgment be against said corporation, until an execution thereupon issued shall be satisfied or released by the plaintiff. SEC. 2.

CHAPTER VI.

DECISIONS OF THE SUPREME COURT OF ILLINOIS ON POINTS OF PRACTICAL INTEREST.

1.	Delivery after temporary detention.	12 Ill. 477.
2.	Police regulations.	13 " 550.
3.	Power of legislature to regulate corporations.	13 " 550.
4.	Baggage, and liability therefor.	13 " 746.
5.	Construction of Charter.	14 " 275.
6.	Conduct of passengers.	15 " 472.
7.	Passengers' right to seat, and duty to keep it.	15 " 472.
8.	Animals on track — trespass.	16 " 198.
9.	Delivery of goods.	16 " 504.
10.	Negligence — burden of proof. 17 Ill. 519;	15 " 468.
11.	Degree of prudence required of a passenger.	17 " 521.
12.	Railroads not common highways.	17 " 551.
13.	Admissions by officer of company.	18 " 298.
14.	Uniformity of charges.	18 " 464.
15.	Means of transportation.	18 " 489.
16.	Partiality in business.	18 " 490.
17.	Unreasonable delay.	18 " 490.
18.	Custom — private warehouses.	18 " 490.

DECISION I.

Lowe v. *Moss*, 12 *Ill. R.* 477.

Delivery after Temporary Detention.

A merchant shipped goods from St. Louis to Lasalle. The river froze, and the ice prevented the boat from going further than Hennepin that season. The merchant took a part of the goods at Hennepin. The rest were subsequently injured. The court held that the liability to deliver the residue of the goods is clear; that the freezing of the river may have been an excuse for storing them temporarily at Hennepin, but the carrier remained liable to deliver them at Lasalle, within a reasonable time after the obstruction was removed. [The freezing of the river is here regarded as an act of God.]

DECISION II.

Galena and Chicago Union Railroad Co. v. *Loomis*, 13 *Ill. R.* 550.

Police Regulations.

Railroad corporations are subject to police regulations, enacted for the protection and safety of the citizens of the country: and such corporations are liable to punishment for criminal offenses, commited in the exercise of their corporate powers.

DECISION III.

Galena and Chicago Union Railroad Co. v. *Loomis*, 13 *Ill. R.* 550.

Power of Legislature to Regulate Corporations.

The Legislature has the power, by the enactment of general laws from time to time, as the public exigencies may require, to regulate corporations in the exercise of their franchises, so as to provide for the public safety.

DECISION IV.

Woods v. *Devin*, 13 *Ill. R.* 746.

Baggage, and Liability Therefor.

The only excuses for non-delivery of baggage, are that the loss was caused by act of God or of the public enemy.

The liability of the carrier commences with the delivery of the baggage to him or to his agent.

The compensation for carrying the baggage, is included in the fare for the transportation of the person.

Pre-payment of fare is not necessary to fix the liability of the carrier.

The carrier is liable for a loss by theft.

In this case, the "act of God" is treated as synonymous with *inevitable accident.*

Baggage does not include a *large* sum of money — nor a trunk full of mere merchandize — nor samples of merchandize for purposes of trade. But it has been held to include money for traveling expenses — a gold watch, though carried in a trunk — a wife's jewelry carried in like manner — a pair of pistols — books for instruction or amusement — a gun, and fishing tackle, and the like.

THE RULE IS, that the term BAGGAGE includes a reasonable amount of money for traveling expenses, and such articles of necessity and convenience as are usually carried by passengers for their personal use, comfort, instruction, amusement, or protection; but it does not include money, merchandize, or other valuables although carried in the passenger's trunk, but designed for different purposes.

Regard may be had to the object and length of the journey; the expenses attending it; and the habits and condition in life of the passenger.

DECISION V.

Newhall v. *Galena and Chicago Union Railroad Co.*, 14 *Ill. R.* 275.

Construction of Charter.

The rule of strict construction applies to railroad charters; but this rule can only be applied in cases of ambiguity, or where a power is claimed by infer-

ence or implication, and is not expressly given by the charter. There must be ambiguity to give room for construction. The corporation has no power unless it be expressly given, or unless it necessarily results from the express provisions of the charter.

DECISION VI.

Galena and Chicago Union Railroad Co. v. *Yarwood*, 15 *Ill. R.* 472.

Conduct of Passengers.

Passengers must conduct themselves with propriety — not violating any reasonable regulation of the train; nor have they a right to interfere with the seats and accommodation possessed and secured by other passengers; they are not entitled to make the length and breadth of the train a common possession; nor should they disturb the quiet and convenience of others, or interfere with the management of the train by passing from car to car, unless for reasonable refreshments and other reasonable purposes.

DECISION VII.

Galena and Chicago Union Railroad Co. v. *Yarwood*, 15 *Ill. R.* 472.

Passengers' Right to Seat, and Duty to Keep it.

The carrier has no right to overload and crowd passengers. When passengers take their seats, they

are entitled to occupy them, as against the carrier and subsequent passengers.

DECISION VIII.

Chicago and Mississippi Railroad Co. v. *Patchin*, 16 *Ill. R.* 198.

Animals on Track — Trespass.

Animals wandering upon the track of an uninclosed railroad, are strictly trespassers, and the company is not liable for their loss while on the track, unless the employes are guilty of willful or wanton injury, or gross negligence, evincing reckless or wanton misconduct. The conduct of the servant must evince a total want of care for the safety of the stock, whereby it is injured, to make the company liable for his negligence. In other words, a case of very gross negligence must be shown, and the burden of proof is on the plaintiff.

DECISION IX.

Chicago and Rock Island Railroad Co. v. *Warren et al.*, 16 *Ill. R.* 504.

Delivery of Goods.

In case of partial loss, the residue must be tendered in good condition, with a sufficient identification. A shipper is not bound to take any and every remnant of his goods in whatever condition it may be identi-

fied and offered to him, short of total destruction. There is a medium, defining mutual rights in this respect.

DECISION X.

Galena and Chicago Union Railroad Co. v. *Yarwood*, 17 *Ill. R.* 519, *and* 15 *Ill. R.* 468.

Negligence — Burden of Proof.

Proof that the plaintiff was a passenger, the accident and the injury, make a *prima facie* case of negligence. The burden of explaining, is thrown upon the defendant. Negligence is a question of fact for the jury, not of law for the court.

DECISION XI.

Galena and Chicago Union Railroad Co. v. *Yarwood*, 17 *Ill. R.* 521.

Degree of Prudence Required of a Passenger.

Persons under the imminency of peril, may not be required to exercise all the presence of mind, and care of a prudent and careful man with impending danger. The law makes allowance, and leaves the circumstances to the jury to find if the party acted rashly and under an undue apprehension of the danger.

DECISION XII.

Central M. T. Railroad Co. v. *Rockafellow*, 17 *Ill. R.* 551.

Railroads not Common Highways.

Railroads are not common highways, in the sense of public wagon roads, upon which every one may transact his own business, with his own means of conveyance, but only in the sense of being compelled to accept of each and all, and take and carry to the extent of their ability.

DECISION XIII.

Chicago, Burlington and Quincy Railroad Co. v. *Coleman et al.*, 18 *Ill. R.* 298, 299.

Admissions by Officer of Company.

Admissions made by the president, or other officer of a railroad company, in the execution of the duties imposed upon him, and concerning a matter on which he is called to act, and which matter is within the scope of the authority usually exercised by him, are evidence against the corporation.

DECISION XIV.

Chicago, Burlington and Quincy Railroad Co. v. *Parks*, 18 *Ill. R.* 464.

Uniformity of Charges.

Charges for passengers and freight, must be uniform; that is, the charges should be the same, for

all persons similarly situated, and for all freights of a like kind and quality, for a given service. The carrier may divide passengers and freight into different classes, with descriptive distinctions, and charge different rates for different classes, for a given service, but the charge should be uniform upon all persons and freights embraced within each class. The carrier may show favor to individuals and classes by carrying them free or for half price, but he cannot be allowed to arbitrarily oppress an individual, charging him an unusual price, simply because it is him.

DECISION XV.

Galena and Chicago Union Railroad Co. v. *Rae et al.*, 18 *Ill. R.* 489.

Means of Transportation.

The carrier must have the means and facilities for transporting with dispatch, the amount of freight ordinarily for carriage. He is not bound to provide in advance for, or anticipate, extraordinary occasions, or an unusual influx of freight to the road.

DECISION XVI.

Galena and Chicago Union Railroad Co. v. *Rae et al.*, 18 *Ill. R.* 490.

Partiality in Business.

The carrier is liable for the frauds and negligence of his agents and employes in the course of their

employment; and if those in charge of the carrier's cars, whose duty it is to assign or give them out to be loaded with grain, through bribery, or from motives of partiality or oppression, give them to persons, by the course and usage of the business, or, in fact, not rightfully entitled to them, and thereby deprive another of the facilities for transportation which he ought to have, he is entitled to such damages as he may have sustained therefrom.

DECISION XVII.

Galena and Chicago Union Railroad Co. v. *Rae et al.*, 18 *Ill. R.* 490.

Unreasonable Delay.

If unreasonable delay be shown, the carrier, to discharge himself, must show a reasonable excuse, arising from accident, or other cause, not the consequence of negligence.

DECISION XVIII.

Galena and Chicago Union Railroad Co. v. *Rae et al.*, 18 *Ill. R.* 490.

Custom — Private Warehouses — Caprice.

The carrier is bound to receive property according to his custom and usage; and if that usage was to run cars upon a side track to private warehouses, and there receive grain in cars, a tender accordingly,

or notice and readiness so to deliver, would impose an obligation on the carrier to take and carry the grain. Having adopted this mode, he could not capriciously require that the grain should be delivered in a different manner, or at a different place.

DECISION XIX.

Galena and Chicago Union Railroad Co. v. *Rae et al.*, 18 *Ill. R.* 491.

Tender or Payment of Charges.

The person desiring the transportation, should be prepared to show a tender, or readiness and willingness to pay the customary price, according to the course and usage of the carrier in such cases.

DECISION XX.

Chicago, Burlington and Quincy Railroad Co. v. *Parks*, 18 *Ill. R.* 460. *St. Louis, Alton and Chicago Railroad Co.* v. *Dally*, 19 *Ill. R.* 363.

Facilities for Buying Tickets.

The company may charge those who neglect to buy tickets, a higher rate of fare, but to justify the company in making this discrimination in the fare, against a passenger who neglects to purchase a ticket at the company's office, the company must see to it that the fault was not that of its own agent,

instead of the passenger. To justify this discrimination, every reasonable and proper facility must be afforded the passenger to procure his ticket. It must furnish a convenient and accessible place for the sale of tickets, with a competent person in attendance, ready to sell them, which should be open and accessible to all passengers for a reasonable time before the departure of each train, and up to the time of its actual departure.

DECISON XXI.

Chicago and Rock Island Railroad Co. v. *Still*, 19 *Ill. R.* 508.

Crossing Public Highways.

Railroad companies, in operating their cars, must be held, in crossing public highways and thoroughfares, to so regulate the speed of their trains, and to give such signals to persons passing, that all may be apprised of the danger of crossing the railroad track. And they should also keep a lookout, so as to see, and, as far as possible, prevent, injury to others exercising their legal rights. It is equally the duty of a person crossing the track of a railroad to be on his guard, and to see that he is not incurring danger to himself and his property.

DECISION XXII.

Chicago, Burlington and Quincy Railroad Co. v. *George*, 19 *Ill. R.* 517.

Duty to adopt Running Regulations, etc.

It is the duty of the railroad company to adopt such rules and regulations for the running of their trains, as will insure safety, and having adopted them, they must conform to them, or be responsible for all consequences resulting from a departure from them.

DECISION XXIII.

Chicago and Alton Railroad Co. v. *Thompson*, 19 *Ill. R.* 584.

Carriers without Provision of Charter.

Railroad companies are common carriers without any legislative declaration to that effect; they are so in virtue of their uniform business.

DECISION XXIV.

Chicago and Alton Railroad Co. v. *Thompson*, 19 *Ill. R.* 585, 590, 594.

Bank Bills — Carriage by Railroad.

Bank bills are not, in common parlance, supposed to be included in the phrase, "goods and chattels."

A contract to carry bank-bills cannot be implied from the nature of the business of railroad companies, as carriers of "goods, freight, etc., and passengers:" an express contract should be proved. Treating a box containing bank bills as of little value, concealing the unusual value of the contents from the carrier, is such a fraud upon him, as will defeat a recovery for the loss.

DECISION XXV.

Illinois Central Railroad Co. v. *Alexander et al.*, 20 *Ill. R.* 29.

Right to act as Warehousemen.

A railroad company may assume the double character of carriers and warehousemen, and when they do this, they have a right to charge a reasonable compensation for warehouse service.

DECISION XXVI.

Michigan Southern and Northern Indiana Railroad Co. v. *Day*, 20 *Ill. R.* 377.

Delay in Forwarding Freight.

Unreasonable delay in the transportation of freight, will render the carrier liable for damages.

DECISION XXVII.

Michigan Southern and Northern Indiana Railroad Co. v. *Day*, 20 *Ill. R.* 379.

Instructions of Consignor.

The instructions of the owner or freighter must be obeyed; and this rule extends to the delivery of the property. If the carrier does this in good faith he will be released from liability.

DECISION XXVIII.

Illinois Central Railroad Co. v. *Cox*, 21 *Ill. R.* 26.

Injury by Fault of Fellow-Servants.

It is right and proper that one servant should not recover against the common master for the carelessness of his fellow-servant, provided competent servants have been selected by the master. Each servant, when he engages in a particular service, calculates the hazards incident to it, and contracts accordingly.

DECISION XXIX.

Tonica and Petersburg Railroad Co. v. *McNeely, etc.*, 21 *Ill. R.* 71.

Subscription before Charter.

A subscription made in contemplation of a charter to construct a railroad, or to accomplish any other

legitimate object, is a valid contract between the parties, and as such may be enforced, the same as any other contract. The consideration is the mutual promise.

DECISION XXX.

Dill et al. v. *Wabash Valley Railroad Co.*, 21 *Ill. R.* 92.

Insolvency no Defense to Subscription.

The insolvency of a railroad company can constitute no ground for restraining the collection of subscriptions. The stockholders must nevertheless make payment for the benefit of creditors.

DECISION XXXI.

Tonica and Petersburg Railroad Co. v. *Stein*, 21 *Ill. R.* 98.

Subscription in Blank.

If a subscription in blank be incorrectly filled up, the truth may be pleaded and proved.

DECISION XXXII.

Supervisors of Fulton County v. *Mississippi and Wabash Railroad Co.*, 21 *Ill. R.* 370.

Change of Charter.

Subscriptions for stock are discharged by a fundamental, extensive and radical change of the charter of the company.

DECISION XXXIII.

Illinois Central Railroad Co. v. *Finnigan et al.*, 21 *Ill. R.* 649.

Disposition of Cattle killed, etc.

The owner of cattle killed must dispose of them to the best practicable advantage. He should make some effort to make them available; for he has no right to abandon them wantonly, and then claim their full value.

DECISION XXXIV.

Mineral Point Railroad Co. v. *Keep*, 22 *Ill. R.* 15.

Service of Foreign Companies.

Railroad companies having their offices and officers in foreign States, but doing business and having agents in Illinois, may be served with process by leaving a copy with any clerk, cashier, secretary, engineer, conductor, or agent.

DECISION XXXV.

Chicago and Rock Island Railroad Co. v. *Whipple*, 22 *Ill. R.* 109.

Liability for Act of Lessee.

Lessees occupy the relation of servants of the company, as to third persons. A railroad company

cannot free themselves from liability by leasing their road to others.

DECISION XXXVI.

Davis v. *Michigan Southern and Northern Indiana Railroad Co.*, 22 *Ill. R.* 280.

Baggage Check.

The delivery of a check to a passenger, is intended to relieve him from all care and superintendence of his baggage while on its journey, and devolves such care upon the agents of the several roads over which it passes, and must be considered as *prima facie* evidence of the delivery of the baggage.

DECISION XXXVII.

Palmer v. *Forbes et al.*, 23 *Ill. R.* 313. *Hunt, etc.*, v. *Bullock et al.*, 23 *Ill. R.* 320.

What Property is Real Estate.

Rolling stock, rails, ties, chairs, spikes, and all other material brought upon the ground of the company, and designed to be attached to the realty, should be considered as a part of the realty — but fuel, oil, office furniture, stationery, and the like, which are designed for consumption in the use, or may be sold and carried away, and used as well for other purposes as in the operation of the road, and

which, when taken away, have no distinguishing marks to show that they were designed for railroad uses, are personal property.

DECISION XXXVIII.

Palmer v. *Forbes et al.*, 23 *Ill. R.* 311.

Power to Execute Mortgage.

Railroad companies can issue mortgages only in pursuance of a power conferred upon them by their charters, or some general statute.

DECISION XXXIX.

City of Chicago v. *Evans et al.*, 24 *Ill. R.* 55.

Lessor's Charter Governs Lessee.

When one company leases its road to another, the lessee must, in operating it, be governed by the charter of the lessor. The lessee cannot use its franchise and charter privileges on the road of another company, but for the time being, must be governed by the charter of the road they were occupying.

DECISION XL.

Frye v. *Tucker et al.*, 24 *Ill. R.* 181.

Right to Negotiate Commercial Paper.

That a railroad company can take a promissory note and negotiate it in the ordinary course of their

business, cannot be questioned. It is a power inherent in all such corporations. An assignment purporting to be by an officer of the company, seems *prima facie* sufficient.

DECISION XLI.

Illinois Central Railroad Co. v. *Copeland*, 24 *Ill. R.* 336.

Baggage Check — What it Imports.

A check is not only *prima facie* evidence that baggage was delivered to the company, but it is also evidence that the party holding it has purchased the rights of a passenger.

DECISION XLII.

Illinois Central Railroad Co. v. *Copeland*, 24 *Ill. R.* 336.

Ticketing over Several Lines.

Where different railways, forming a continuous line, run their cars over the whole line, and sell tickets for the whole route, and check baggage through, an action lies against either company for the loss of baggage. The English courts regard the company receiving the passenger and baggage, as carriers for the entire route. There are American cases to the contrary, but the Supreme Court of Illinois have declared in favor of the English rule —

and it seems a change of cars along the route would make no difference.

DECISION XLIII.

Chicago, Burlington and Quincy Railroad Co. v. *Dewey, Administratrix, etc.*, 26 *Ill. R.* 255.

Mutual Care Required.

To authorize a recovery of damages, it is not enough simply to show that the railway company were guilty of negligence, but it should also appear that the person injured was not guilty of negligence, in some degree comparable to that of the company. Where the party injured has acted with *slight negligence*, contributing to produce the injury, it must appear that the other party was guilty of *gross negligence*. The injured party need not be wholly free from negligence, if the other party has been culpable.

DECISION XLIV.

Chicago, Burlington and Quincy Railroad Co. v. *Hazard*, 26 *Ill. R.* 388.

Measure of Care Required.

All reasonable skill and diligence must be employed by both the carrier and passenger.

DECISION XLV.

Bass v. *Chicago, Burlington and Quincy Railroad Co.*, 28 *Ill. R.* 9.

Negligence — Fire.

It is negligence in a railroad company to suffer dry grass and rubbish to be upon their right of way, or permit vegetation of any kind to grow upon it, to such a height and density as would conceal animals which might be there.

If a fire be set by sparks from a passing engine, the presumption is, that any loss which may result, was occasioned by the negligence of the company, and it is incumbent on them to show that proper precautions had been taken by them.

DECISION XLVI.

Ohio and Mississippi Railroad Co. v. *Muhling*, 30 *Ill. R.* 23.

Defective Bridge — Accident — Payment of Fare.

If a trestle bridge be imperfectly and insecurely constructed, a railroad company is liable for injuries from an accident occasioned by such defect.

That the person has paid no fare, can make no difference. The company had the right to demand the fare when he came upon the road, and to put him from the cars for a refusal to pay; or they

might have collected it afterwards, or have deducted it from their indebtedness to him; or if they carried him gratuitously it would make no difference.

When upon a train, under such circumstances, the only inquiry is, whether he is lawfully there, not whether he has paid his money for the privilege.

DECISION XLVII.

Wilkinson et al., Trustees of Terre Haute, Alton and St. Louis Railroad Co., v. *Fleming*, 30 *Ill. R.* 353.

Liability of Trustees in Possession.

If trustees take possession of a railroad, under a deed of trust, and hold themselves out to the world as doing business, and running the road in the name of the corporation, their property is responsible, and suit may be maintained against them by such name, accordingly.

DECISION XLVIII.

Great Western Railway Co. v. *Morthland*, 30 *Ill. R.* 458.

Killing Stock — Negligence.

If an animal go wrongfully on a railroad track, and be killed without carelessness on the part of those who have charge of the train, the owner has no remedy.

CHAPTER VII.

RAILWAY STATUTES OF INDIANA — MISCELLANEOUS SECTIONS OF ESPECIAL IMPORTANCE.

I. ACT OF MARCH 4, 1853.

1. Right and duty to carry persons and property — right to use steam, animal or other power — compensation therefor.
2. Regulation of time, manner, tolls, and compensation.
3. Conductor, and every other employe, must wear official badge.
4. Refusal to pay fare — right to expel.
5. Times of trains — public notice — sufficient accommodations — persons, property, tolls, and fare.
6. Refusal to take, transport, and deliver — damages, and costs.
7. Formation of trains — accident — penalty.
8. Riding on platform, etc., when room inside — notice — accident — liability.

II. ACT OF MARCH 1, 1853.

9. Uninclosed railroad — killing or injuring stock — misconduct, negligence, accident.

III. ACTS JANUARY 25, AND FEBRUARY 23, 1853.

10. Consolidation of stock — common name, etc.

I. ACT OF MARCH 4, 1853.

1. *Right and Duty to carry Persons and Property — Right to use Steam, Animal or other Power — Compensation therefor.*

Every such [railroad] corporation, shall possess the general powers and be subject to the liabilities and restrictions expressed in the following, that is to say:

Eighth: To take, transport, carry and convey persons and property on their railroads by the force and power of steam, of animals, or any mechanical power, or by any combination of them, and receive tolls or compensation therefor.

2. *Regulation of Time, Manner, Tolls, and Compensation.*

Tenth: To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor. SEC. 13.

3. *Conductor, and every other Employe, must wear Official Badge.*

Every conductor, baggage master, engineer, brakeman, or other servant of any such railroad corporation, employed in a passenger train, or at stations for passengers, shall wear upon his hat or cap, a badge which shall indicate his office, and the initial letter of the style of the corporation by which he is employed. No collector or conductor without such badge shall demand or be entitled to receive from any passenger any fare or ticket, or exercise any of the powers of his office; and no other of said officers or servants, without such badge, shall have any authority to meddle or interfere with any passenger or property. SEC. 24.

4. *Refusal to pay Fare — Right to Expel.*

If any passenger shall refuse to pay his fare or toll, the conductor of the train, and the servants of the corporation, may put him out of the cars at any usual stopping place. SEC. 28.

5. *Times of Trains — Public Notice — Sufficient Accommodations — Persons, Property, Tolls, and Fare.*

Every such corporation shall start and run their trains for the transportation of persons and property at regular times to be fixed by public notice, and shall furnish sufficient accommodations for the transportation of all such passengers and property as shall, within a reasonable time previous thereto offer, or be offered for transportation, at the place of starting and the junctions of other railroads, and at siding and stopping places, established for receiving and discharging way passengers and freight, and shall take, transport and discharge such passengers and property, at, from and to such places, on the due payment of tolls, freight or fare therefor. SEC. 29.

6. *Refusal to Take, Transport, and Deliver — Damages, and Costs.*

In case of the refusal, by such corporations or their agents, so to take and transport any passenger

or property, or to deliver the same at the regular appointed place, such corporation shall pay to the party aggrieved all damages which shall be sustained thereby, with costs of suit. SEC. 30.

7. *Formation of Trains — Accident — Penalty.*

In forming a passenger train, baggage or freight, or lumber cars shall not be placed in rear of passenger cars; and if they, or any of them, shall be so placed, and any accident shall happen to life or limb, the officer or agent who so directed or knowingly suffered such arrangement, and the conductor or engineer of the train, shall each and all be held guilty of intentionally causing the injury, and be punished accordingly. SEC. 31.

8. *Riding on Platform, etc., when Room Inside — Notice — Accident — Liability.*

In case any passenger on any railroad shall be injured on the platform of a car, or on any baggage, wood or freight car, in violation of the printed regulations of the company, posted up at the time in a conspicuous place inside of its passenger cars, then in the train, such company shall not be liable for the injury: *Provided*, said company at the time furnished room inside its passenger cars, sufficient for the proper accommodation of its passengers. SEC. 32.

II. ACT OF MARCH 1, 1853.

9. *Uninclosed Railroad — Killing or Injuring Stock — Misconduct, Negligence, Accident.*

Whenever any animal or animals shall be killed or injured by the cars or locomotives or other carriages used on any uninclosed railroad in this State, the owner thereof may recover the value of the animal or animals destroyed or injury inflicted, without regard to the question whether such injury or destruction was the result of willful misconduct or negligence, or the result of unavoidable accident. SECS. 1, 2.

III. ACTS OF JAN. 25, AND FEB. 23, 1853.

10. *Consolidation of Stock — Common Name, etc.*

The acts of January 25, and February 23, 1853, provide for the association of several railroads, common name, consolidation of stock, etc.

IV. ACT OF MARCH 1, 1855.

11. *Assaulting Train a Misdemeanor — Penalty.*

That any person who shall shoot a gun, pistol or other weapon, or throw a stone, stick, clubs or any other substance whatever, at or against any locomotive or car or train of cars containing persons, on

any railroad in this State, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined in any sum not less than ten nor more than one hundred dollars, and imprisoned in the county jail not less than ten days nor more than three months. SEC. 1.

12. *Injury to Person — Assault — Murder — Penalty.*

In case any person on such locomotive, car, or train of cars, shall be injured or wounded, by any such act, the person so offending shall, on conviction, be deemed guilty of assault, with intent to commit murder, and be imprisoned in the State prison, for not less than one nor more than four years; and if death ensue, such person shall be deemed guilty of murder in the first degree, and punished accordingly. SEC. 2.

V. ACT OF FEB. 27, 1857.

13. *Crossing Tracks — Stopping — Other Train in Sight — Injuries — Penalties.*

That if the engineer of any locomotive running upon any railroad track, upon and over which passengers are or may be transported, shall run his locomotive across or upon the track of any other railroad, upon and over which passengers are or may be transported, without first coming to a full stop,

before crossing such other track, and without first ascertaining that there is no train or locomotive in sight, approaching such crossing, on such other track; or if he shall run or permit his locomotive to cross such track, when a locomotive is in sight, approaching such crossing on such other track, he shall, on conviction, be fined in any sum not less than one hundred dollars, and not more than one thousand dollars, and in addition thereto, shall be imprisoned in the county jail for any period not less than three months, nor more than one year, and if any person shall be injured or killed, by reason of such crossing, he shall be imprisoned in the State prison for any period not less than two years, nor more than fourteen years. SEC. 1.

14. *False Information — Carelessness of Conductor, Brakeman, or Engineer — Penalty.*

If any person shall falsely report to such engineer, that there is no train or locomotive approaching such crossing; or if the conductor of any train shall order and direct the engineer to violate the provision of the first section of this act; or if by reason of the gross carelessness or willful neglect of duty of the brakeman of any train of cars, such train or locomotive shall run across or upon such crossing, such conductor or brakeman shall suffer the penalty

prescribed for the engineer, in the first section of this act. SEC. 2.

If any such engineer shall permit his locomotive to run upon or across such other track, until the locomotive and train upon the other track has passed over such crossing, if the signal man from the locomotive or train on the other track shall arrive at the crossing first, he shall suffer the same penalty prescribed in the first section of this act. SEC. 3.

15. *Stopping on other Railroad Track — Penalty.*

It shall not be lawful for any locomotive or train to be stopped or remain stationary on any railroad crossing, unless the same is done by the united agreement and under specific regulations adopted by the directors of such crossing railroad, and if the provisions of this section shall be violated, the person or persons so offending, shall suffer the same punishment prescribed in the first section of this act. SEC. 4.

VI. ACT OF MARCH 5, 1861.

16. *Readjustment or Capitalization — Order of Liens — Debts for Labor and Supplies — Damages for Killing Stock, etc.*

In case of readjustment or capitalization of railroad on sale, next in order of lien to the existing

mortgage debt of the old road, shall stand the amounts due persons for labor performed, and wood and other such materials furnished the old company in running the road, and damages for killing stock, and right of way: *Provided*, that all the property of said company shall be liable for damages recovered against said company for stock killed or injured by them, and exempt from mortgage liens. SEC. 4.

VII. ACT OF MARCH 4, 1863.

17. *Lessees, Assignees, Receivers — Liability for Stock Killed.*

That lessees, assignees, receivers and other persons running or controling any railroad in the corporate name of such company, shall be liable, jointly or severally with such company, for stock killed or injured by the locomotives, cars or other carriages of such company, to the extent and according to the provisions of this act. SEC. 1.

18. *Act does not apply to Fenced Railroads.*

This act shall not apply to any railroad securely fenced in, and such fence properly maintained by such company, lessee, assignee, receiver, or other person running the same. SEC. 7.

CHAPTER VIII.

DECISIONS OF THE SUPREME COURT OF INDIANA, ON POINTS OF PRACTICAL INTEREST.

1.	NON-DELIVERY — MEASURE OF DAMAGES.	4 Ind.	262.
2.	ACT OF GOD — INEVITABLE ACCIDENT — RESTRICTION OF LIABILITY.	5 "	222.
3.	INCLOSURES — NEGLIGENCE — ANIMALS — ACT OF MAY 11, 1852.	5 "	111.
4.	SERVANTS, EMPLOYES, PASSENGERS, ACCIDENTS — LIABILITY — PAYMENT OF FARE.	5 "	339.
5.	CASE APPROVED — SPEED IN TOWN.	6 "	141.
6.	FELLOW-SERVANTS — NON-LIABILITY OF COMPANY.	6 "	205.
7.	BAGGAGE — MONEY — THEFT.	6 "	242.
8.	NEGLIGENCE — INJURY — FELLOW-SERVANT.	7 "	436.
9.	PASSENGER — DISREGARD OF ORDER — ACCIDENT.	7 "	474.
10.	EMPLOYER — EMPLOYE — NEGLIGENCE — RISKS.	10 "	554.
11.	CARRIER — DELIVERY — WAREHOUSING.	12 "	55.
12.	NON-TRANSPORTATION — MEASURE OF DAMAGES.	13 "	164.
13.	PARTIAL LOSS — PARTIAL DELIVERY — NOTICE.	13 "	263.

DECISION I.

Wallace v. *Vigus*, 4 *Blackford R.* 262.

Non-Delivery — Measure of Damages.

In an action for non-delivery of property received by a common carrier for transportation, the measure of damages is said to be the wholesale value of the property (merchandise) at the place of destination.

DECISION II.

Walpole v. *Bridges*, 5 *Blackford R.* 222.

Act of God — Inevitable Accident — Restriction of Liability.

The phrase, " act of God " embraces all unavoidable dangers and accidents. The exception of " unavoidable dangers and accidents of the road" is included in the acts of God, and does not restrict the general liability of the carrier.

DECISION III.

Williams v. *The New Albany and Salem Railroad Co.*, 5 *Ind. R.*, *Porter*, 111.

Inclosures — Negligence — Animals — Act of May 11, 1852.

At common law, proprietors are not bound to fence against each other; but each is bound to keep his stock upon his own land.

If an animal be wrongfully on a railroad track, and be killed without carelessness, the company are not liable for the loss, under the general doctrines of law. It is otherwise if the animal be wantonly destroyed.

But the act of 11th May, 1852, made railroad companies liable for all stock killed on *uninclosed* railroads, without regard to negligence, misconduct, or inevitable accident.

[Note. There are numerous subsequent cases, for the killing of animals, which cases involve the construction of the act above cited; and a variety of questions of negligence and misconduct. But the foregoing case is regarded as a sufficient statement of the rule for practical purposes.]

DECISION IV.

Gillenwater v. *The Madison and Indianapolis Railroad Co.*, 5 *Ind. R., Porter*, 339.

Servants, Employes, Passengers — Accidents — Liability — Payment of Fare.

Public carriers of passengers not only engage for the competent skill of their employes, but for its faithful and continued application.

The same rule applies to natural persons and to corporations.

Disobedience of orders by a servant seems to be no defense.

The payment or non-payment of fare is immaterial.

A person in the employ of a railroad company may recover for injuries in consequence of the fault of another employe, *unless they be fellow-servants, engaged in the same business*, as the running of a train. [See subsequent cases.]

DECISION V.

The Lafayette and Indiana Railroad Co. v. *Shriner*, 6 *Ind. R., Porter*, 141.

Case Approved — Speed in Town.

The case of *Williams* v. *New Albany and Salem Railroad Co.*, 5 Ind. 111, on inclosures, negligence, animals, act of May 11, 1852, is approved.

In passing through a town, a train should be run with greater care, and at a less speed, than is generally required.

DECISION VI.

The Madison and Indianapolis Railroad Co. v. *Bacon*, 6 *Ind. R., Porter*, 205.

Fellow-Servants — Non-Liability of Company.

Servants engaged in a *common employment* have no action against their principal for injuries received from the negligence of each other.

DECISION VII.

Doyle v. *Kiser*, 6 *Ind. R., Porter*, 242.

Baggage — Money — Theft.

A carrier is not liable for the loss of an unreasonably large sum of money, $3,357, carried as baggage, and without information thereof to the carrier. The fact that the money was stolen by a servant of the carrier would make no difference, because in the opinion of the court, the money was mere property delivered to the carrier.

DECISION VIII.

Fitzpatrick v. *The New Albany and Salem Railroad Co.*, 7 *Ind. R., Porter*, 436.

Negligence — Injury — Fellow-Servant.

Gillenwater's case is again approved.

A railroad company is liable for injuries caused by the negligence of an employe to another employe, who is engaged not in the same, but in another business.

This is a case of a laborer employed in ballasting the track, who was injured by carelessness of the engineer while being carried not in the course of his work, but from his boarding house to the place of his employment.

DECISION IX.

The Lawrenceburgh and Upper Mississippi Railroad Co. v. *Montgomery*, 7 *Ind. R., Porter*, 474.

Passenger — Disregard of Order — Accident.

The mere disregard by a passenger of an order given for his safety, will not defeat an action for injuries received. It must, to have this effect, further appear that such disobedience was the cause of the injury.

DECISION X.

The Indianapolis and Cincinnati Railroad Co. v. *Love*, 10 *Ind. R., Tanner*, 554.

Employer — Employe — Negligence — Risks.

It seems that the employer and the employed are bound to exercise all reasonable care for the safety of each other, and to communicate to each other, causes of danger which may not be mutually known.

If both know the danger, and the employer assume the responsibility, and give directions, and injuries result therefrom to the employe, he may recover; but if no such directions be given, each party takes his own risk.

DECISION XI.

The New Albany and Salem Railroad Co. v. *Campbell et al.*, 12 *Ind. R., Tanner*, 55.

11. *Carrier — Delivery — Warehousing.*

It is settled that when goods transported by railway, arrive at their place of destination, and are unloaded from the cart, and placed upon the platform, ready for delivery to the consignee, and he notified of their arrival, the liability of the carrier, as a carrier, is at an end.

In such a case, if the consignee does not receive the goods, it is the duty of the carrier to place them securely, and keep them safely, a reasonable time, ready to be delivered when called for. But the liability of the company in such a case, is that of warehousemen, not that of common carriers.

If, after the liability as carriers is at an end, and that of warehousemen has attached, the goods be destroyed by fire, not caused by any negligence of the company, they are not liable for the loss.

DECISION XII.

The Michigan Southern and Northern Indiana Railroad Co. v. *Castler et al.*, 13 *Ind. R., Tanner*, 164.

12. *Non-Transportation — Measure of Damages.*

Where goods are delivered to a carrier and are not transported according to his undertaking, the measure of damages is the value of the goods at the place of destination, less the freight.

DECISION XIII.

The Michigan Southern and Northern Indiana Railroad Co. v. *Bivens*, 13 *Ind. R., Tanner*, 263.

13. *Partial Loss — Partial Delivery — Notice.*

If a part only, of the goods shipped, be ready for delivery, it is [generally] the duty of the consignee to receive such part, though the residue of the goods be lost or injured.

The consignee must make a demand before he can maintain suit.

The court even express a doubt whether notice to the consignee, of the arrival of the property, be necessary.

[NOTE. The only *safe* way, is to give the notice. The general principles of law require it; custom

may render it necessary; and the courts would probably hold it essential.]

DECISION XIV.

The Ohio and Mississippi Railroad Co. v. *Tindall*, 13 *Ind. R.*, *Tanner*, 367.

14. *Fellow-Employes — Negligence — Liability.*

A set of hands was engaged in graveling a railroad track. They loaded at a pit, and the same hands unloaded the carts at the place of destination.

While thus employed, the carts were thrown off the track through the alleged carelessness of the engineer.

This case is within the rule that one employe cannot recover for the carelessness of another employe in the same business; and is distinguishable from the case of Fitzpatrick in 7 Ind., Porter, 436.

DECISION XV.

The Evansville and Crawfordsville Railroad Co. v. *Lowdermilk, Adm'r, etc.*, 15 *Ind. R.*, *Harrison*, 120.

15. *Negligence of Injured Party.*

If one's own negligence, and want of ordinary care, contributed to his injury, he cannot recover, though the other party be also guilty of negligence, unless that negligence was so gross as to imply a willingness to inflict the injury.

DECISION XVI.

Wilson v. *The Madison and Indianapolis Railroad Co.*, 18 *Ind. R., Harrison*, 226.

16. *Fellow-Employe — Negligence — Liability.*

An employe, whose duties under his employment are various, consisting, among other things, of coupling and uncoupling trains, is, while thus employed, in the same general undertaking as the engineer and conductor, and cannot recover of the company for injuries caused by their negligence or misconduct, while so employed.

Tindall's case, 13 Ind. 367, is cited and approved.

CHAPTER IX.

RAILWAY STATUTES OF MICHIGAN — MISCELLANEOUS SECTIONS OF ESPECIAL IMPORTANCE.

I. ACT OF FEBRUARY 12, 1855.

1. Rate of speed.
2. Powers and liabilities — Persons and property — motive power.
3. Regulations — compensation — amount of fare.
4. All employes must wear badges — no right to act without same.
5. Power to reduce rates of fare, etc.
6. Refusal to pay fare — right to expel, etc.
7. Time of trains — notice — extent of accommodations — due payment — partiality — penalty.
8. Refusal to take, carry and deliver — all damages and costs, or penalty.
9. Bell, whistle, penalty, and damages.
10. Sign-boards at crossings.
11. Intoxication — liability — misdemeanor.
12. Fences — duty to build — liability — negligence — animals on track.
13. Common carriers — several companies forming one line — abridgment of liability prohibited.
14. Consolidation of railroad companies.

I. ACT OF FEB. 12, 1855.

1. *Rate of Speed.*

No car shall be run at a higher rate of speed than fifteen miles an hour upon any road constructed with the flat bar rail. Sec. 1.

2. *Powers and Liabilities — Persons and Property — Motive Power.*

Every such corporation shall possess the general powers and be subject to the liabilities and restrictions following, that is to say:

To take, transport, carry and convey persons and property on their said road by the force and power of steam, of animals, or any mechanical powers, or by any combination of them, and receive tolls and compensation therefor.

3. *Regulations — Compensation — Amount of Fare.*

To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor; but such compensation for any passenger and his ordinary baggage, shall not exceed three cents a mile, unless by special act of the legislature. SEC. 17.

4. *All Employes must wear Badges — no Right to Act without same.*

Every conductor, baggage master, engineer, brakeman, or other servant of such railroad corporation organized under the provisions of this act, or otherwise created, employed in a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge, which shall indicate his office, and the initial letters of the style of the corporation by which he shall be employed. No conductor or collector without such badge shall demand or be entitled to receive from any passenger, any fare, toll

or ticket, or exercise any of the powers of his office; and no other of said officers or servants, without such badge, shall have any authority to meddle or interfere with any passenger, his baggage or property. Sec. 31.

5. *Power to reduce Rates of Fare, etc.*

Section 35 provides that the legislature may reduce the rates of freight and fare, under certain circumstances.

6. *Refusal to Pay Fare — Right to Expel, etc.*

If any passenger shall refuse to pay his fare or toll, it shall be lawful for the conductor of the train and servants of the company to put him out of the cars at any usual stopping place, or dwelling-house the conductor shall select. Sec. 37.

7. *Time of Trains — Notice — Extent of Accommodations — Due Payment — Partiality — Penalty.*

Every such corporation shall start and run their cars for the transportation of passengers and property at regular times, to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and property

as shall, within a reasonable time previous thereto, offer or be offered, for transportation at the place of starting, and the junctions of other roads, and at siding and stopping places established for discharging and receiving way passengers and freight, and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of toll, freight or fare, legally authorized therefor; and every such corporation shall transport merchandise, property and persons from the various stations upon said road, without partiality or favor, when not otherwise directed by the owner of said property, and with all practicable dispatch, and in the order in which said freight or property shall have been received, under a penalty for each violation of this provision, of one hundred dollars, to be recovered by the party aggrieved in an action of debt against such corporation. SEC. 38.

8. *Refusal to Take, Carry, and Deliver — all Damages and Costs, or Penalty.*

In case of the refusal, by such corporation or agents, so to take and transport any such passengers or property as aforesaid, or to deliver the same or either of them, at the regular appointed time, without a legal or just excuse for such default, such corporation shall pay to the party aggrieved all

damages which shall be sustained thereby, with costs of suit, or the penalty prescribed in section 38 of this act, at the election of the party aggrieved. SEC. 39.

9. *Bell, Whistle, Penalty, and Damages.*

A bell of at least thirty pounds weight, and a steam whistle, shall be placed on each locomotive engine, and said bell shall be rung, or whistle sounded, at the distance of not less than eighty rods of the place where the said road shall cross any other road or street, under a penalty of fifty dollars for every neglect, to be paid by the corporation owning such railroad; and the railroad corporation shall also be liable for all damages which shall be sustained by any person by reason of such neglect. SEC. 40.

10. *Sign-boards at Crossings.*

Every railroad corporation shall, and they are hereby authorized to cause boards to be placed, well supported by posts or otherwise, and maintained across each public road or street where the same is crossed by the railroad, and on the same level; the board shall be elevated so as not to obstruct the travel, and to be easily seen by travelers, and on each side of said board shall be printed in capital letters, of the size of not less than nine inches each,

the words, "Rail Road crossing; look out for the cars"! But this section shall not apply to streets in cities and villages, unless the railroad corporation be required to put up such boards by the officers having charge of such streets. SEC. 41.

11. *Intoxication — Liability — Misdemeanor.*

If any person shall be intoxicated, while in charge of a locomotive engine, running upon the railroad of any corporation in this State, or while acting as the conductor of any train of cars on any such railroad, he shall be liable for all damages incurred or produced by either his neglect or inefficiency, and shall be deemed guilty of a misdemeanor. SEC. 42.

12. *Fences — Duty to Build — Liability — Negligence — Animals on Track.*

Section 43, provides that railroads formed under the act shall fence their roads; that till then shall be liable for all damages resulting from neglect to do so; and thereafter for such damages negligently or willfully done. It also prohibits persons from leading, riding or driving any animal on the track without consent, under penalty of ten dollars and damages.

13. *Common Carriers — Several Companies forming one Line — Abridgment of Liability Prohibited.*

Any railroad company receiving freight for transportation, shall be entitled to the same rights, and subject to the same liabilities as common carriers, except as herein otherwise provided. Whenever two or more railroads are connected together by running arrangements, any company owning either of said roads, receiving freight to be transported by agreement to any place on the line of either of the said roads so connected, shall be liable as common carriers for the delivery of such freight at such place. In case any such company shall become liable to pay any sum, by reason of the neglect or misconduct of any other company or companies, the company paying such sum may collect the same of the company or companies, by reason of whose neglect or misconduct it became so liable. No railroad corporation created in this State shall be suffered to lessen, or directly or indirectly abridge their common law liability as such common carriers. Sec. 48.

14. *Consolidation of Railroad Companies.*

Section 50, provides for the consolidation of two or more companies.

15. *Action for Death of Person.*

Section 54, provides for an action where the death of any person has been caused by the wrongful act, neglect, or default of a railroad company or its agents.

16. *Violation of Regulations by Employe — Penalty, Fine, Imprisonment.*

Any conductor, engineer, servant or other employe of any railroad corporation, who shall willfully violate any of the written or printed rules thereof, in relation to the running of cars or trains for transportation of persons or property, shall be subject to a fine of not less than twenty-five, nor more than one hundred dollars, or to imprisonment in the county jail not more than six months. SEC. 57.

17. *Obstruction of Track — Penalty.*

If any person shall, by the placing of any impediment upon the track of any railroad, or by any other means whatsoever, throw from said track, any engine or cars used thereon, or attempt so to do, whether such engine or cars are thrown from said track or not, or shall by any other means whatsoever, willfully endanger, or attempt to endanger the the lives of persons engaged in the work of said road, or persons traveling on the engine or cars of

said road, he shall be subject to imprisonment in the State prison during his natural life, or any number of years at the discretion of the court. SEC. 58.

18. *Checking Baggage — Refusal, Penalty — Fare — Witness.*

A check shall be fixed to every parcel of baggage when taken for transportation, by the agent or servant of such corporation, if there is a handle, loop, or fixture so that the same can be attached, upon the parcel of baggage so offered for transportation, and a duplicate thereof given to the passenger or person delivering the same on his behalf; and if such check be refused on demand, the corporation shall pay to such passenger the sum of ten dollars, to be recovered in a civil action; and further, no fare or toll shall be collected or received from such passenger; and if such passenger shall have paid his fare, the same shall be refunded by the conductor in charge of the train; and on producing said check, if his baggage shall not be delivered to him, he may himself be a witness in any suit brought by him to prove the contents and value of such baggage. SEC. 59.

19. *Unclaimed Baggage — Publication — Sale at Auction—Perishable Property—Surplus Proceeds.*

Every railroad company which shall have had unclaimed freight not perishable, or unclaimed baggage, in its possession for a period of one year at least, may proceed to sell the same at public auction, and out of the proceeds may retain the charges of transportation and storage of such freight, and the expenses of advertising and sale thereof; but no such sale shall be made until the expiration of six weeks from the first publication of notice of such sale, in at least one newspaper published in the city of Detroit, and also in one newspaper published at or nearest the place where such freight or baggage was directed to be left, and also at the place where such sale is to take place; and said notice shall contain a description of such freights or baggage, the place at which and the time when the same was left, as near as may be, together with the name of the person to whom consigned, if known; and the expenses incurred for advertising shall be a lien on such freight in a ratable proportion, according to the value of such article, package or parcel, if more than one; in case such unclaimed freight shall be in its nature perishable, then the same may be sold as soon as may be on giving the notice required in

this section, after its receipt at the place where it was directed to be left. Such railroad company shall make an entry of the balance of the proceeds of the sale, if any, of each parcel of freight owned by or consigned to the same person, as near as can be ascertained, and at any time within five years thereafter shall refund any surplus so retained to the owner of such freight or baggage, his or her heirs or assigns, on satisfactory proof of such ownership. SEC. 60.

20. *Stopping at Crossings — Failure — Penalty.*

Every passenger, freight or other train of cars, running upon any railroad, shall come to a full stop, before crossing any other railroad built or constructed upon the same grade; and every engineer, conductor or other person having charge or control of such train of cars, who shall offend against the provisions of this section, shall forfeit for each offense the sum of one hundred dollars, to be recovered by action of debt; and any railroad company who shall, by their rules and regulations for running trains of cars upon such railroad, require any passenger, freight, or other train to cross any other railroad built or constructed upon the same grade, without coming to a full stop before such crossing, shall forfeit a like sum for every day such rule or regula-

tion shall continue in force, to be recovered as aforesaid. SEC. 61.

21. *Formation of Trains — Penalty.*

In forming a passenger train upon any railroad, organized under the provisions of this act, baggage, freight, merchandise or lumber cars, shall not be placed in rear of the passenger cars; and if they or any of them shall be so placed, the officer or agent who so directed or knowingly suffered such arrangement, shall be deemed guilty of a misdemeanor, and be punished accordingly. SEC. 62.

22. *Owner of Baggage — Witness.*

Section 1, of the act of April 2, 1849, provides that the owner of baggage lost by any railroad company, shall be a competent witness, in suits in relation to such baggage, between such owner and the railroad company or its agents, to prove the value of such baggage; but no judgment shall be rendered on such testimony alone for more than one hundred and fifty dollars. [CHAP. 181 of compilation of 1857.]

23. *Malicious Injury of Road, etc. — Penalty.*

Every person who shall willfully and maliciously break down, injure, remove or destroy any public or toll bridge, or any railroad, or any turnpike gate,

or any lock in any dam, or any lock, culvert or embankment of any canal, or who shall willfully and maliciously make any aperture or breach in any such embankment, with intent to destroy or injure the same, shall be punished by imprisonment in the State prison not more than five years, or by fine not exceeding five hundred dollars, and imprisonment in the county jail not more than one year. SEC. 47.

II. ACT OF FEB. 10, 1859.

24. *Personal Delivery within two Miles of Depot — Option of Carrier — Other Directions.*

Every railway company in this State is authorized to make personal delivery of every parcel, package, or quantity of goods or property, if the consignee of such property shall reside within two miles of the terminus, or railway station or other terminus of the carriage of such property by the main line of such carrier, and they are hereby authorized to employ or own all the means necessary to perform such duty, and to place the men and vehicles therefor under the government and sole regulation of the superintendent or other proper officer of such companies. Such delivery shall be at the house, shop, office or other place of business of the consignee, according to the nature of such

property, and where the owner or consignee desires to have the same: *Provided,* That in all cases where the consignor or consignee shall desire to have said property taken at the depot, station, or terminus of the carriage of the same, he shall be at liberty to do so, and on notice given, either by a party sending goods, or a party expecting to receive any, that he or they so desire, they shall remain in the usual manner, and for the usual time in the custody of said carrier, subject to the order of the owner thereof. SEC. 3.

III. ACT OF MARCH 15, 1861.

25. *Rates of Fare — Peninsular Roads.*

The ninth division of section 17, of the act of February 12, 1855, is amended so that railroads in the upper Peninsula having less than fifty consecu tive miles of road in actual operation, are excepted from its provisions, and allowed to charge different rates.

CHAPTER X.

DECISIONS OF THE SUPREME COURT OF MICHIGAN, ON POINTS OF PRACTICAL INTEREST.

DECISION I.

Fitch et al. v. *Newberry et al., Doug. R.* 1.

Duty of Carrier — Lien — Agency — Delivery.

A common carrier is bound to receive and carry goods, only when offered for carriage by their owner

or his authorized agent; and then, only on payment for the carriage, in advance, if required. To justify a lien upon goods for their freight, the relation of debtor and creditor must exist between the owner and the carrier, so that an action at law might be maintained.

If a carrier for part of a route, contract to carry over the whole, the carriers who assist in the transportation, are his agents, not those of the owner, and are bound by his contract. The property must not only be carried, but it must also be delivered.

DECISION II.

Williams v. *The Michigan Central R. R. Co.*, 2 *Mich. R., Gibbs*, 259.

Live Stock on Track — Negligence.

One who allows his horses to stray away upon a railroad track, is guilty of a *culpable degree of negligence.* If live stock be killed in consequence of any negligence or fault of a railroad company or their engineer, without any negligence or fault on the part of the owner, he may recover.

DECISION III.

Michigan Central Railroad Co. v. *Ward*, 2 *Mich. R., Gibbs*, 538.

Delivery — Notice — Storage — Restriction of Liability.

A carrier can discharge himself from liability for the non-delivery of goods, only by showing that he

is prevented by act of God or of a public enemy; a warehouseman may do so, by showing that he exercised ordinary care and diligence.

In the absence of any special contract or local custom, or usage of particular trades, it is incumbent on a common carrier, by the rules of the common law, to deliver the property personally to the consignee, and until such delivery, he does not discharge himself from the obligations and duties the law has cast upon him.

To this rule, there is an exception of all those common carriers whose modes of transportation render it impracticable to comply with it, including carriers by ship, boat and railroad, who must necessarily stop at dock or depot.

In these cases, the law requires, in lieu of personal delivery, a notice to the consignee, and nothing will dispense with such notice, [except the act or fault of the party entitled to have it given.]

Section 16, of the charter of this company, provides for notice to consignees, and for charging storage on property not duly removed, but held "awaiting delivery."

Common carriers remain liable *as carriers* till after such notice; and the charter of this company does not change this rule.

A private person cannot by contract change the duties which the law imposes on common carriers; but he may cease to act as in that capacity. But a railroad company, by the acceptance of their incorporation, enter into a contract with the State, that they will become, and will continue and remain common carriers for the people of the State. Such a corporation has no power to change, by any bargain with a private person, the terms of its contract with the sovereign power.

The charter of this company provides that it shall "transport merchandise and property on said road, without showing partiality or favor, and with all practicable dispatch."

These provisions of the charter are regarded merely as in affirmance of the common law. [See Hale's case No. V, and statutes No. 13.]

DECISION IV.

Day v. *Owen*, 5 *Mich. R.*, *Cooley*, 520.

Right to be Carried — Accommodations — Regulations — Negro.

The plaintiff was a negro. The defendant would be liable for a general refusal to carry the plaintiff, unless he could show some good excuse, releasing him from the obligation.

The *right to be carried*, cannot be touched by rules and regulations, but the *privileges and accommodation of passengers*, while being transported, are subject to such rules and regulations as the carrier may think proper to make, provided they be reasonable.

A refusal to allow the plaintiff the privilege of the cabin, on his tendering cabin fare, was nothing more or less than denying him certain *accommodations* from which he was excluded by the rules and regulations of the boat.

Rules and regulations may include everything calculated to render the transportation most comfortable, and least annoying to the passengers generally, not to one, or two, or any given number at a particular time, but to a large majority of the passengers ordinarily carried.

The reasonableness of a rule or regulation is a mixed question of law and fact, to be found by the jury, on the trial, under the instructions of the court.

The law does not require a carrier to make any rules whatever, but it cannot deny him the right to do so if he deems it for his interest.

DECISION V.

The Michigan Central R. R. Co. v. *Hale*, 6 *Mich. R., Cooley*, 243.

Carriers, Warehousemen — Changing Liability by Contract — Ward's Case.

Under the charter of this company, they are warehousemen and discharged from their liability as carriers, from the time the property carried, is placed in the depot ready to be delivered; but they cannot charge storage, till after notice to the consignee, twenty-four hours, Sundays excepted, at Detroit, and four days elsewhere.

A railroad company cannot restrict their liability by notice or any act of their own; but they may do so by contract. The company has not a *right*, but the citizen has a *privilege* to make such a contract, or he may compel the company to comply with the terms imposed by the law. Ward's case, 2 Mich. R. 538, is overruled in these respects.

DECISION VI.

Gardner v. *Smith*, 7 *Mich. R., Cooley*, 410.

Fences — Contractor — Injury — Liability.

The general railroad act requires railway companies to fence their roads, and makes them and their agents liable for all damages from neglect to build such fence, etc.

This duty to erect fences, arises as soon as the company take possession of the road, and enter along the line for the purpose of constructing it.

A contractor is an agent of the company within the meaning of the act; and liable to the owner of property injured, both as such agent, and as a contractor exercising the power of the company, over the road, for the purpose of its construction.

In such a case, the owner might sue either the contractor or the company.

DECISION VII.

Michigan Southern and Northern Indiana Railroad Co. v. *Shurtz*, 7 *Mich. R., Cooley*, 515.

Warehousemen — Carriers — Liability.

A railroad company are not liable, *as common carriers*, for goods deposited in their warehouse to await the orders of the depositor.

If so deposited to be transported to a given point, the liability, *as carrier*, commences immediately.

On deposit to await orders, where no storage is charged, the company are liable only for want of common care; but the liability as carriers will commence as soon as the order to forward the goods is given.

DECISION VIII.

The Michigan Central R. R. Co. v. *Leahey*, 10 *Mich. R., Cooley*, 193.

Master, Servant, Employe — Negligence.

A person who has contributed to his own injury, by his own negligence, and who might have escaped injury by the exercise of ordinary care, cannot recover.

The law may now be regarded as settled, that a master is not liable to a servant for the neglect of his fellow-servant. The master is liable, only where his own personal neglect has directly contributed to the injury, or where he has not used ordinary diligence in employing competent servants.

[One Hidden took a contract with the company to saw and pile wood at a station. Leahey was a common workman employed in that business by Hidden, and was injured by the cars running off the track. The company set up that the injury occurred through Hidden's fault. The company prayed the court below to instruct the jury,

1. That Hidden and Leahey were bound to use the same care as the company, and if the neglect of either contributed proximately to the accident, the plaintiff could not recover, unless the company's servants acted wantonly or willfully.

2. That if the cars were thrown off the track by Hidden's fault, Leahey could not recover, unless the conduct of the company's servants was wanton or willful.

The court below declined so to instruct, except with the qualification that it must appear that Leahey knew of Hidden's act (placing a plank on the track) and exposed himself to the danger. The plaintiff recovered a verdict, and the Supreme Court were equally divided on the question whether said instructions ought to have been given with the qualification or without it. So the judgment below was affirmed.]

CHAPTER XI.

RAILWAY STATUTES OF OHIO—MISCELLANEOUS SECTIONS OF ESPECIAL IMPORTANCE.

I. ACT OF MARCH 20, 1840.

1. Injury of track, etc., or obstruction of train — crime, murder, penalty.
2. Driving wagon, etc., on track — necessity, consent, penalty.

II. ACT OF MARCH 6, 1845.

3. Injury of road, etc. — value — penalty.
4. Injury of equipments, buildings, etc. — value — penalty.
5. Value under thirty-five dollars — penalty.
6. Advisers, assistants and abettors — offense — penalty.

III. ACT OF FEBRUARY 11, 1848.

7. Rates chargeable for passengers and for freight.
8. Signs at crossings — liability for failure.

IV. ACT OF MAY 1, 1852.

9. Rates chargeable for passengers and for freight.
10. Signs at crossings — liability for failure — company required to fence road.
11. Consolidation of companies.

I. ACT OF MARCH 20, 1840.

1. *Injury of Track, etc., or Obstruction of Train — Crime, Murder, Penalty.*

Every person who shall willfully and maliciously remove, break, displace, throw down, destroy, or in

any manner injure, any iron, wooden, or other rail, or any branches or branch ways, or any part of the tracks, or any bridge, viaduct, culvert, embankment, parapet, or other fixture, or any part thereof, attached to, or connected with, such tracks of any railroad in this State now in operation, or which shall hereafter be put in operation, or who shall willfully and maliciously place any obstruction or obstructions upon the rails or tracks of any such railroad, shall, on conviction thereof, be punished by imprisonment in the penitentiary, not exceeding three years nor less than one year; provided, however, that if any person shall, by the commission of either of the aforesaid offenses, occasion the death of any person or persons, the person so offending shall be guilty of murder, in the first or second degree, or manslaughter, according to the nature of the offense, and, on conviction thereof, shall be punished as in other cases. SEC. 1.

2. *Driving Wagon, etc., on Track — Necessity, Consent, Penalty.*

That every person who shall draw or drive any wagon, carriage, cart, coach, gig, or other two or four wheeled vehicle on or between the rails or tracks, or on or along the graded roadway of such road, (unless compelled by necessity so to do) with-

out the knowledge and consent of the company owning or controling said road, shall, on conviction thereof before any justice of the peace, pay a fine not less than five nor more than twenty-five dollars, to be collected and paid over for the use of such railroad company. SEC. 2.

II. ACT OF MARCH 6, 1845.

3. *Injury of Road, etc. — Value — Penalty.*

That every person who shall willfully and maliciously throw down, break, remove, displace, cut, split, burn, or in any other manner destroy or injure any of the rails, sills, cross ties, piles, bridges, culverts, viaducts, parapet or any other fixture, to the value of thirty-five dollars or upwards, or shall willfully and maliciously injure or destroy any embankment of any railroad within this State, now constructed or in process of construction, or any railroad which shall hereafter be constructed, or in the process of construction, to the value of thirty-five dollars or upwards, shall, on conviction thereof, be punished by imprisonment in the penitentiary not exceeding three years nor less than one year. SEC. 1.

4. *Injury of Equipments, Buildings, etc. — Value — Penalty.*

Every person who shall willfully and maliciously cut, break, burn, injure or destroy, any locomotive,

car, or other machinery, now, or which may hereafter be, in use upon any railroad within this State, or any wood house, car house, or water station erected for the accommodation and use of any railroad within this State, to the value of thirty-five dollars or upwards (shall,) on conviction thereof, be punished by imprisonment in the penitentiary not exceeding three years nor less than one year. SEC. 2.

5. *Value under Thirty-five Dollars — Penalty.*

Section 3, provides for the punishment by fine or imprisonment in the county jail for offenses under the preceding sections where the value of the property injured, etc., is less than thirty-five dollars.

6. *Advisers, Assistants, and Abettors — Offense — Penalty.*

Section 4, makes the punishment for such offenses, the same for accessories as for principals.

III. ACT OF FEB. 11, 1848.

7. *Rates chargeable for Passengers and for Freight.*

Such [railroad] corporation may demand and receive for the transportation of passengers on said road not exceeding three and one half cents per mile, and for the transportation of property not

exceeding five cents per ton per mile, when the same are transported a distance of thirty miles or more; and in case the same are transported for a less distance than thirty miles, such reasonable rates as may be from time to time fixed by said company. At any time after the expiration of ten years, from the time any such road may be put in operation, it shall be lawful for the General Assembly to prescribe the rates to be charged for the transportation of persons or property upon said road, should they be deemed too high, and may exercise the same power ten years thereafter: Provided, that no reduction shall be made, unless the net profits of the company on an average for the previous ten years shall amount to ten per centum per annum upon its capital, and then so as not to reduce the future probable profits below the said per centum. SEC. 12.

8. *Signs at Crossings — Liability for Failure.*

Every company organized under this act, shall be required to erect at all points where their road shall cross any public road, at a sufficient elevation from such public road, to admit of the free passage of vehicles of every kind, a sign, with large and distinct letters placed thereon, to give notice of the proximity of the railroad, and warn persons of the necessity of looking out for the cars; and any com-

pany neglecting or refusing to erect such sign, shall be liable in damages for all injuries occurring to persons or property from such neglect or refusal. SEC. 18.

IV. ACT OF MAY 1, 1852.

9. *Rates chargeable for Passengers and for Freight.*

Section 13, re-enacts the rates provided for in section 12, of the act of 1848.

10. *Signs at Crossings — Liability for Failure — Company required to Fence Road.*

Section 18, re-enacts the provisions of section 18, of the act of 1848, with the following additional provision:

Each railroad company shall be required to fence its road, with a good substantial wooden fence, under such rules as the county commissioners of the several counties through which the same may pass shall prescribe.

11. *Consolidation of Companies.*

Sections 21, 22 and 23, provide for the consolidation of two or more railroad companies.

12. *Stopping at each Station — Penalty.*

That every railroad company in this State, shall cause all its trains of cars for passengers, to entirely

stop upon each arrival at a station advertised by such company as a station for receiving passengers upon such trains, at least one half of one minute; and every company, and every person in the employment of such company, that shall violate, or cause or permit to be violated, the provisions of this section, shall be liable to a forfeiture of not more than one hundred nor less than twenty dollars; to be recovered in an action of debt upon the complaint of any person before any justice of the peace of the county in which such violation shall occur; and in all cases in which a forfeiture shall occur, under the provisions of this section, the company whose agents shall cause or permit such violation, shall be liable for the amount of such forfeiture, and in all cases the conductor upon such train, shall be held *prima facie* to have caused the violation of this section, which may occur upon the train in his charge; said forfeiture to be recovered in the name of the State of Ohio for the use of the common schools. SEC. 26.

V. ACT OF APRIL 8, 1856.

13. *Notice to Owner — Time for Removal — Sale and Disposition of Proceeds.*

This act provides that all warehousemen, transportation companies, or railroad companies, shall

give notice, by letter or otherwise, to the owners, of the receipt of property, and that it is held subject to charges, in all cases where the owner's name and place of residence is plainly marked. If the property be not removed within thirty days after notice, the same may be sold at auction, on thirty days advertisement in two papers published and of general circulation in the county.

The surplus of proceeds, after payment of charges and expenses, shall be held one year, and if not called for, shall then be paid into the county treasury, accompanied by a schedule of the property, and the particulars concerning the same.

The owner may claim the money and prove his title within six months thereafter, at which time the funds not claimed shall be transferred to the school fund. See act of March 25, 1863.

VI. ACT OF APRIL 15, 1857.

14. *Crossings, Signals, Precedence.*

When the tracks of two railroads cross each other at a common grade, the crossings shall be made and kept up, and watchmen maintained at the joint expense of the two companies owning said tracks; and all trains passing over said tracks, shall come to a stop within six hundred feet of such crossings, and not cross until signaled so to do by the watch-

man, nor until the way is clear. And when two passenger or two freight trains come up at the same time, the train on the road first built shall have precedence, provided they are both main tracks over which all passengers and freights from said road are transported, but if one, only, is such main track, and the other is a side or depot track, then the train on the main track shall take precedence. But if they be a passenger and freight train, then the passenger train shall take precedence. SEC. 6.

VII. ACT OF MARCH 25, 1859.

15. *Fencing Railroads — Crossings — Cattle-Guards — Penalty — Subsequent Acts.*

This act provides that every railroad company or other party having the control or management of a railroad, the whole, or a part of which shall be located within this State, shall, and is hereby required, within two years after the passage of this act, or within two years after commencing to run cars thereon for the transportation of passengers and freight, to construct and maintain good and sufficient fences on both sides of such road, or such part thereof as shall be in running order, and located within this State; and also to make and maintain a sufficient number of suitable crossings for the accommodation of the public, and of persons living near

the line of such railroad, together with the necessary cattle-guards, to prevent cattle and other animals from endangering themselves, and the lives of passengers, by getting upon such railroad, and such company shall be liable for all damages which may result to horses, cattle, or other domestic animals, by reason of the want or insufficiency of such fences, road crossings, or cattle-guards, or by any carelessness or negligence of such company, party, or agent or agents thereof.

When a railroad shall pass through or along the boundary of any inclosed field, the proprietor is required to construct one-half the fence necessary to partition such inclosed lands from the railroad. And any person desiring private crossings or cattle-guards, shall be responsible for one-half the expense of constructing and maintaining the same. SEC. 1.

Section 5, provides a penalty, not exceeding fifty dollars per day, for neglect or refusal to construct such fences, etc., or to keep the same in repair.

The act of March 26, 1860, extends the time for enclosing railroads, etc., so far as relates to those in operation when the act of 1859 took effect, to three years after the passage of the last mentioned act.

The act of March 28, 1862, extended the time for railroads which do not pay a dividend on their stock, to two years from March 1, 1862.

The act of March 30, 1864, further extended the time for such non-paying railroads, to one year from the first day of March, 1864.

16. *Stock on Track — Penalty.*

The riding, leading, or driving any domestic animal within any railroad inclosure, without proper consent, is prohibited, under a penalty of not more than ten dollars for each offense. SEC. 1.

VIII. ACT OF APRIL 11, 1861.

17. *Prohibition of Monopoly — Equal Rates — Diverting Freight — Penalty.*

Section 1, requires all railroads to carry freight or passengers offered, and forbids agreements with other lines not to carry between common points.

Section 2, provides that branch lines shall be charged equal rates for carriage over the trunk road.

Section 3, forbids the diverting of freight from the line to which it is directed, to another, under penalty of three-fold freight to the injured line, and one hundred dollars fine and thirty days imprisonment.

Section 4, allows an injunction, on complaint.

IX. ACT OF MARCH 16, 1863.

18. *Injuring Road or Obstructing Track — Penalties.*

This act provides that every person who shall willfully and maliciously remove, break, displace, throw down, destroy or injure any railroad or any work or fixture, etc., or place obstruction on same, shall be imprisoned in the penitentiary not less than one, nor more than twenty years. If death ensues, the offense is murder or manslaughter, and to be punished accordingly. SEC. 1.

This act is amendatory of the act of March 26, 1860, which is amendatory of section 1, of the act of March 20, 1840.

X. ACT OF MARCH 25, 1863.

19. *Unclaimed Freight — Advertisement — Sale — Disposition of Proceeds — Penalty for Violation.*

This act requires railroad companies to keep a register of unclaimed property, in all cases of refusal, owner unknown, or neglect to remove for sixty days. This register must contain all the particulars of time, place, description, supposed value, etc.

Such list must be sent quarter-yearly to the State auditor.

The auditor may order delivery to sheriff or county auditor.

The State auditor shall advertise within sixty days, for six months; after which, if the property be not claimed, the property shall escheat to the State, and be disposed of accordingly. Perishable property may be sold in sixty days after notice, but jewelry not in less than a year. The proceeds shall be paid to the county treasurer, and the State auditor shall pay the freight and charges due to railroads, out of the fund; but in no case more than the property brought above expenses. The owner may reclaim, and have warrant on treasury for surplus, at any time within five years.

If railroad companies carry such property out of the State, or neglect or refuse to comply with act, they forfeit not exceeding double the value of the property, or the amount of the injury thereby. The act is extended to all express companies, common carriers, forwarding and commission merchants, wharfingers and warehousemen.

XI. ACT OF APRIL 14, 1863.

20. *Through and Way Freight — Discrimination Prohibited.*

This act requires as ample facilities for local and way freight as for through freight *pro rata*, so that there shall be no discrimination in favor of either class of freight, against the other.

CHAPTER XII.

DECISIONS OF THE SUPREME COURT OF OHIO, ON POINTS OF PRACTICAL INTEREST.

1. RESTRICTION OF LIABILITY — NOTICE — WATCH — BAGGAGE. 10 Ohio, 145.
2. ADVANCES — LIEN — WAREHOUSING — FORWARDING — AGENCY. 11 " 303.
3. CONTRACT TO RECEIVE AND CARRY — LIABILITY. 20 " 54.
4. BAGGAGE — WITNESS — PARTY — WIFE. 20 " 318.
5. FELLOW-EMPLOYE — NEGLIGENCE — LIABILITY. 20 " 415.
6. RESTRICTION OF LIABILITY — MISTAKE — NEGLIGENCE — BURDEN OF PROOF. 2 Ohio S. 131.
7. DELIVERY SUBJECT TO CONDITION. 2 " 142.
8. COMMON LAW — INCLOSURES — TRACK — STOCK — LIABILITY — ACCIDENT — NEGLIGENCE. 3 " 172.
9. COMMON LAW — PRINCIPAL AND AGENT — CONDUCTOR, BRAKEMAN, FELLOW-SERVANT — ACCIDENT — STEVENS CASE. 3 " 201.
10. RESTRICTING LIABILITY — NEGLIGENCE — BURDEN OF PROOF. 4 " 362.

DECISION I.

Jones v. *Voorhees*, 10 *Ohio R.*, *Wilcox*, 145.

Restriction of Liability — Notice — Watch — Baggage.

A common carrier cannot limit his liability by a notice to the owner of property to be carried.

Whatever forms the necessary appendages of a traveler, may be legitimately considered as baggage.

A traveler's watch may be carried in his trunk.

However valuable an article of baggage may be, the owner is not bound to disclose such peculiar value, unless inquiry is made.

DECISION II.

Bowman v. *Hilton*, 11 *Ohio R., Stanton*, 303.

Advances — Lien — Warehousing — Forwarding — Agency.

In case of carriage over several lines, and under several contracts, a carrier who in good faith, and with a reasonable prudence, makes advances to a prior carrier, has a lien on the property for his commission and advances, notwithstanding the goods have been damaged in the hands of such prior carrier.

In such a case, the first carrier is discharged when he has deposited the property with a responsible warehouseman; or has delivered it to the next carrier in order.

The warehouseman may discharge himself by forwarding the property according to the established usage and custom.

In such cases, the forwarder is the agent of the consignor, not of the prior carrier.

DECISION III.

Montgomery v. *Kent et al.*, 20 *Ohio R., Lawrence*, 54.

Contract to Receive and Carry — Liability.

The liability of a common carrier does not attach, till the property is actually received.

For a refusal to receive, he is liable as an ordinary person for breach of contract.

DECISION IV.

The Mad River and Lake Erie Railroad Co. v. *Fulton*, 20 *Ohio R., Lawrence*, 318.

Baggage — Witness — Party — Wife.

In case of a loss of ordinary baggage, carried in a trunk, the passenger or his wife may prove the description and value of the contents of the trunk.

DECISION V.

The Little Miami R. R. Co. v. *Stevens*, 20 *Ohio R., Lawrence*, 415.

Fellow-Employe — Negligence — Liability.

Where an engineer was under the control of the conductor of the train, and had not been informed of a change in the time of the trains, and followed the directions of the conductor, and there was a collision by which he was injured, the company was held liable, and he recovered a heavy verdict.

DECISION VI.

Davidson v. *Graham et al.*, 2 *Ohio State R., Warden*, 131.

Restriction of Liability — Mistake — Negligence — Burden of Proof.

In Ohio, a common carrier cannot restrict his liability by notice, verbal, written, or printed, even

when brought to the knowledge of the owner of the property. There is no principle of public policy to prevent the carrier from restricting his liability for losses which do not arise from any neglect or fault on his part. He may therefore make such restriction by an express contract.

But he cannot make a valid contract against his liability for any loss which may happen by any neglect or misconduct on his part. And the law holds him to extraordinary diligence, which is such as very careful and prudent men take in their own affairs. This degree of diligence cannot be reduced by contract.

In all cases of loss, the burden of proof is on the carrier, to show, if he can, that he is not liable.

DECISION VII.

Owen v. *Johnson*, 2 *Ohio State R., Warden*, 142.

Delivery subject to Condition.

If a carrier receive goods to be delivered on performance of any precedent act, he is bound to hold the property and enforce performance of the condition.

DECISION VIII.

Kerwhacker v. *The Cleveland, Columbus and Ohio Railroad Co.*, 3 *Ohio State R., Warden & Smith*, 172.

Common Law — Inclosures — Track — Stock — Liability — Accident — Negligence.

The common law is in force in Ohio, only so far as it has been adopted by the courts.

There is no law in Ohio requiring an owner to keep his cattle within an inclosure, and it is not unlawful or wanting ordinary care to allow them to run at large.

But if they be dangerous or mischievous, he is bound to confine them. The owner of open lands may drive cattle off, or may inclose his premises.

The owner of cattle running at large takes the risk of all unavoidable accidents.

A railroad company has an undeniable right to the exclusive and unmolested use of its track. But if such company leave their road uninclosed, they take the risk of intrusions from animals running at large.

Where negligence of the same nature on the part of both parties has produced the injury, there is no redress.

Where negligence of one is the immediate, and of the other the remote cause of the injury; or

where no care of the latter could have prevented the injury, he may recover. And even a party who is guilty of negligence, may recover for malicious, willful, or wanton injuries.

In the case above supposed, the railroad company would be bound to use ordinary care and caution.

DECISION IX.

The Cleveland, Columbus and Cincinnati Railroad Co. v. *Keary*, 3 *Ohio State R., Warden & Smith*, 201.

Common Law — Principal and Agent — Conductor, Brakeman, Fellow-Servant — Accident — Stevens Case.

The court profess to administer the common law of England, so far as its principles are not inconsistent with the genius and spirit of the institutions of Ohio.

It is of public policy and convenience that the principal is held to warrant the fidelity and good conduct of his agent in all things within the scope of his agency.

The conductor of a railway train is its master. He is not a fellow-servant with the brakeman, for the latter is under his control.

If, therefore, a brakeman be injured, through the fault of the conductor, the company is liable.

The case of Stevens, No. V, *ante*, is affirmed.

DECISION X.

Graham et al. v. *Davis et al.*, 4 *Ohio State R., Warden*, 362.

Restricting Liability — Negligence — Burden of Proof.

A common carrier is incapable, by any act of his own, of limiting, or evading the responsibility which the law attaches to his office.

The carrier, by agreement with the owner may exonerate himself from responsibility for losses arising from causes over which he has no control, and to which his own fault or negligence has in no way contributed.

Any negligence in the carriage of passengers may well deserve the epithet of *gross*.

The burden of proof is upon the carrier to show, in case of loss, not only an exception within which the loss may fall, but also that no negligence or want of care on his part contributed to the result.

DECISION XI.

Carman et al. v. *The Steubenville and Indiana Railroad Co.*, 4 *Ohio State R., Warden*, 399.

Employer and Contractor — Injury — Liability.

If an employer retains the power of superintending the work, and directing it to be done in such a

manner as he sees fit, the decided weight of authority is, that it becomes his duty to see it done in a careful and skillful manner, and if he fails in this, he fails to perform his duty to third persons, and is liable for the injuries they may sustain.

DECISION XII.

The Cleveland, Columbus and Cincinnati Railroad Co. v. *Elliot*, 4 *Ohio State R.*, 474.

Duty of Conductor — Passenger — Cattle.

The paramount duty of the conductor of a train, is to watch over the safety of the persons and property in his charge; subject to which it is his duty to use reasonable care to avoid unnecessary injury to animals straying upon the road.

DECISION XIII.

The Mad River and Lake Erie Railroad Co. v. *Barber*, 5 *Ohio State R., Critchfield*, 541.

Conductor, Duty — Injury — Liability of Company.

The relation of a conductor to the company is different from that of a subordinate hand, or of a passenger. He has the actual control of the train, and is bound to reasonable care and diligence in the management of the train, and also in the due inspection of the cars, machinery and apparatus. In case of any insufficiency or delinquency of hands,

or any defect in the cars or machinery, he should report the same to the company, and forthwith take the necessary and proper precautions for the safety of the train, and the persons upon it.

In case of an injury to the conductor from any cause, he cannot recover of the company, unless they were guilty of actual fault or misconduct, either in the act which caused the injury, or in the selection and employment of those by whose fault the injury occurred.

But he may waive his right by consenting to run a train which is insufficiently provided.

DECISION XIV.

The Cleveland, Columbus and Cincinnati Railroad Co. v. *Terry*, 8 *Ohio State R., Critchfield*, 570.

Mutual Negligence — Ordinary Care.

In case of mutual negligence contributing directly to the injury, there can be no recovery. If the injured party did not, under all the circumstances, exercise reasonable care, he cannot recover.

As to third persons, not passengers, a railroad company is bound to exercise ordinary care and prudence.

DECISION XV.

Welsh et al. v. *The Pittsburgh, Fort Wayne and Chicago Railroad Co.*, 10 *Ohio State R., Critchfield*, 65.

Defective Cars — Restriction of Liability — Live Stock.

A railroad company is liable for a loss of cattle through defective car-doors, notwithstanding an express contract to the contrary.

DECISION XVI.

Manville v. *The Cleveland and Toledo Railroad Co.*, 11 *Ohio State R., Critchfield*, 417.

Who are Fellow-Servants.

All who are engaged in the common service of operating the railroad, may properly be regarded as *fellow-servants*, [unless one is subject to the control of the other, so that as between them, one is not a servant but the representative of the company.]

DECISION XVII.

The Cleveland, Columbus and Cincinnati Railroad Co. v. *Bartram*, 11 *Ohio State R., Critchfield*, 457.

Payment of Fare — Election of Train — Freight Train.

Fare must be paid or tendered to one authorized to receive it.

A passenger cannot compel a company to carry him on a freight train, contrary to their rules and regulations.

If a passenger freely elect to go by freight train, and be admitted therein, his right of election, having been exercised, is exhausted, and unless extraordinary circumstances require, he cannot, after having started on his journey by such train, leave it and take another, without the consent of the proper agent of the company.

DECISION XVIII.

The Columbus and Xenia Railroad Co., and the Little Miami Railroad Co. v. *Webb's Adm'x*, 12 *Ohio State R., Critchfield*, 475.

Company — Care — Employes, Passengers.

A railroad company is bound, as to passengers, to use the highest degree of care to provide suitable equipments — as to its employes, it is bound to use all reasonable care in that behalf.

If a brakeman be injured by neglect of the company to exercise such care, he may recover — if by negligence of a fellow-servant, such servant, and not the company, is liable.

CHAPTER XIII.

RAILWAY STATUTES OF PENNSYLVANIA — MISCELLANEOUS SECTIONS OF ESPECIAL IMPORTANCE.

I. ACT OF APRIL 16, 1838.

1. *Malicious Injury or Obstruction of Railroad — Penalty.*

If any person shall willfully and maliciously set fire to, destroy or injure any part of a locomotive or stationary engine, engine house, bridge, culvert, trestle work or other building or structure belonging, or appurtenant to any railroad constructed or located by this commonwealth, or by any company authorized by law to construct a railroad; or shall willfully and maliciously obstruct any such railway or do any damage to the materials or any part thereof, or shall put any timber, stone, iron or other matter thereon, or do any other act in relation to such railroad, whereby the lives of persons or property employed or transported on the same shall be

endangered, such person or persons shall, upon conviction of such offense, before any court of competent jurisdiction, be sentenced to pay the damages caused by such offense, and to be imprisoned in the jail of the proper county or in one of the penitentiaries in the State, for any term not exceeding five years. SEC. 8.

If any person shall wantonly derange or displace the fixtures or machinery of any locomotive or stationary engine, or inclined plane used or employed on any railroad as aforesaid; or shall put in motion any machine, engine, car or other vehicle upon or belonging to any such railroad, without the consent of the person having the charge of the same, or shall destroy or injure any fence or wall or cross road passing over or under such railroad, such person or persons shall forfeit any sum not exceeding one hundred dollars, and pay all damages caused by such offense; such person or persons may also be prosecuted criminally, and on conviction of the said offenses or either of them, be sentenced to imprisonment not exceeding twelve months in the jail of the proper county. SEC. 9.

2. *Animals on Track — Penalty.*

If any person shall willfully and wantonly, without the consent of the person having charge of any

such railroad, lead, drive, or cause to be led or driven, any horse, mule, ox, sheep, swine or other cattle on such railroad, or upon the banks or sideways thereof, or haul any other vehicle than railroad cars upon any such railroad except at places constructed for crossing the same, or use any animal or vehicle on such railroad, contrary to the regulations of the canal commissioners or of the board of managers or directors, as the case may be, such person or persons shall forfeit twenty-five dollars, and pay all damages arising from such offense. SEC. 10.

II. ACT OF MARCH 20, 1845.

3. *Obstructing Public Streets — Penalty.*

Section 1, provides that no railroad company shall block up the crossings of public streets or roads; in case any servant or agent of any railroad company does block up such street or road, he shall be subject to a penalty of twenty-five dollars, and if not able to pay such penalty, the railroad company employing him shall pay it.

III. ACT OF APRIL 17, 1846.

4. *Unlawful disposition of Property by Carrier — Penalty.*

If any person or persons engaged in transporting coal, iron, lumber, or other articles of merchandise

or any property whatsover upon any river, railroad or canal within this commonwealth, shall sell, dispose of, or pledge the same, or any part thereof, without the consent of the owner or owners thereof, such offense shall be deemed a misdemeanor; and on conviction therefor shall be punished by fine, not less than fifty nor exceeding five hundred dollars; and suffer imprisonment in the county jail in which the offense is committed, for a term not less than twenty days nor more than one year, at the discretion of the court. SEC. 1.

Section 2, provides that after July 1st, 1846, persons who shall purchase merchandise consigned to persons in this State or in adjoining States, without the knowledge and consent of the owners, knowing the same to have been consigned by a captain of a canal boat or other person engaged in transportation of such property, shall be liable to pay to such owners double the value of the property so bought.

IV. ACT OF FEB. 19, 1849.

5. *Cross-roads, Causeways — Damages.*

Section 12, provides that when any newly constructed road necessarily crosses an established road, the crossing shall be so constructed as not to interfere with the business of such established road; that railroad companies shall construct and maintain

causeways for the accommodation of the owners of the land through which such road passes; and that such railroad companies shall be liable for all damages occasioned by their neglect.

6. *Willful Injury — Damages to Railroad Company — Criminal Prosecution.*

If any person shall willfully and knowingly break, injure or destroy any railroad authorized by special act of assembly, or any part thereof, or any edifice, device, property, or work, or any part thereof, owned or used by such company in pursuance of this act, he, she or they so offending, shall forfeit and pay to such company, three times the actual damage so sustained, to be sued for and recovered before any tribunal having cognizance thereof, by action in the name and for the use of the company. SEC. 15.

If any person or persons shall willfully or maliciously remove and destroy any part of the road, property, buildings or other works, belonging to such company, or place, designedly and with evil intent, any obstruction on the line of such railroad, so as to jeopard the safety and endanger the lives of persons traveling on or over the same, such person or persons so offending, shall be deemed guilty of a misdemeanor, and shall, on conviction, be

imprisoned in the county jail or penitentiary, at the discretion of the court, for a term not more than three years: *Provided*, that nothing herein contained shall prevent the company from pursuing any other appropriate remedy at law in such cases. SEC. 16.

7. *Public Highway — Rules and Regulations — Rates of Compensation for Passengers and Freight.*

Upon the completion of any railroad authorized as aforesaid, the same shall be esteemed a public highway for the conveyance of passengers, and the transportation of freight, subject to such rules and regulations, in relation to the same, as to the size and construction of wheels, cars and carriages, and all other matters and things connected with the use of said railroad, as the president and directors may prescribe and direct: *Provided*, that the said company shall have the exclusive control of the motive power, and may, from time to time, establish, demand and receive such rates of toll or other compensation for the use of such road, and of said motive power, and for the conveyance of passengers, the transportation of merchandise and commodities, and the cars or other vehicles conveying the same or otherwise passing over or on said railroad, as to the president and directors shall seem reasonable: *Provided*,

however, *nevertheless*, That said rates of toll and motive power charges, so to be established, demanded or received, when the cars used for such conveyance or transportation shall be owned or furnished by others, shall not exceed two and one-half cents per mile for each passenger, three cents per mile for each ton of two thousand pounds of freight, three cents per mile for each passenger or baggage car, and two cents per mile for each burden or freight car, every four wheels to be computed a car; and in the transportation of passengers no charge shall be made to exceed three cents per mile for through passengers, and three and a half cents per mile for way passengers. SEC. 18.

V. ACT OF APRIL 22, 1850.

8. *Carriage of Gunpowder.*

Section 9, of the act of April 22, 1850, provides that no gunpowder shall be transported over any railroad, canal or slack water, unless the same shall be conspicuously marked "gunpowder."

Persons violating this section are liable to indictment, and punishable by fine and imprisonment or either of them. Fine, five hundred dollars; imprisonment, six months.

VI. ACT OF APRIL 12, 1851.

9. *Obstruction of Private Road or Crossing — Penalty.*

Any chartered railroad company in this commonwealth obstructing or impeding the free use or passage of any private road or crossing place, by standing burden cars or engines, or placing other obstructions on any railroad wherever any private road or crossing place may be necessary to enable the occupant or occupants of land or farms to pass over any railroad with horses, cows, hogs, sheep, carts, wagons and implements of husbandry, shall for every such offense, after any agent or other person in the employment of any railroad company, shall have received at least fifteen minutes' verbal notice to remove burden cars, engines or other obstructions from any private road or crossing place that may pass over any railroad, be liable for a penalty of thirty dollars, which shall be for the use of the person or persons aggrieved, and which shall be recovered before any justice of the peace in the same manner that debts not exceeding one hundred dollars are by law recoverable. And in all suits or actions that may be brought against any railroad company for the recovery of said penalty of thirty dollars, the service of legal process on any agent or

other person in the employment of any railroad company shall be as good and available in law as if made on the president thereof. SEC. 2.

VII. ACT OF MARCH 16, 1858.

10. *Lien of Carriers, Commission Merchants and others — Sale for Non-payment of Charges.*

Commission merchants and factors, and all common carriers or other persons having a lien upon goods, wares and merchandise, for or on account of the costs and expenses of carriage or storage, or any other charge arising from the transportation of such property, in case the owners or consignees shall not pay or discharge the amount due for such cost, expense, carriage, storage, or other charges, hereinbefore named, may, after the expiration of ninety days from the notice hereinafter provided, proceed to sell the same, or so much thereof as may be necessary to discharge said lien, at public auction: *Provided*, That notice of sale shall be given as required for sheriffs' sales of personal property, and that thirty days' notice of said lien be given to the owner or consignee of the property, if they can be found, and in case they cannot be so found, that the same shall be advertised weekly in some newspaper published in the proper city or county to which the goods, wares or merchandize have been consigned,

for four consecutive weeks before the sale; the residue of money arising from such sale, after deducting the cost of transportation charges and storage, advertising and sale, to be held subject to the order of the owner or owners of such property. SEC. 1.

VIII. ACT OF MAY 16, 1861.

11. *Consolidation of Railway Companies.*

This act authorizes a merger by one railroad company of its corporate rights, powers and privileges, "into any other railroad company connecting therewith;" so that the same may be transferred to and vested in the company into which such merger shall be made.

IX. ACT OF MAY 6, 1863.

12. *Ticket Agents — Frauds — Penalties.*

Section 1, of this act requires the owners of conveyances for the transportation of passengers, to furnish their ticket agents with certificates of authority to act as such agents, duly attested by the corporate seal, if any, and the signature of the owner or officer whose name is signed upon the tickets.

Section 2, prohibits all persons not so authorized from selling any such tickets, whether the railroad, steamboat, or other public conveyance be situated,

operated or owned, within or without the limits of this commonwealth.

Section 3, makes a violation of section 2, punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding one year, or both, in the discretion of the court.

Section 4, requires ticket agents to exhibit such authority, on request, to persons desiring to purchase tickets, and to any officer of the law; also to keep the same posted in a conspicuous place in their offices, for the information of travelers.

It shall be the duty of the owner or owners of railroad, steamboat, and other public conveyances, to provide for the redemption of the whole or any parts or coupons of any ticket or tickets, as they may have sold, as the purchaser for any reason has not used, and does not desire to use, at a rate which shall be equal to the difference between the price paid for the whole ticket, and the cost of a ticket between the points for which the proportion of said ticket was actually used; and the sale by any person, of the unused portion of any ticket, otherwise than by the presentation of the same for redemption, as provided for in this section, shall be deemed to be a violation of the provisions of this act, and shall be punished as is hereinbefore provided: *Provided*, That this act shall not prohibit

any person who has purchased a ticket from any agent authorized by this act, with the *bona fide* intention of traveling upon the same, from selling any part of the same to any other person, if such person travels upon the same. SEC. 5.

CHAPTER XIV.

DECISIONS OF THE SUPREME COURT OF PENNSYLVANIA, ON POINTS OF PRACTICAL INTEREST.

1.	NON-TRANSPORTATION — MEASURE OF DAMAGES.	10 Watts, 418.
2.	BAGGAGE — CONTENTS — WITNESS.	10 " 335.
3.	BAGGAGE — MONEY — WITNESS.	2 W.&S.230.
4.	FALSE MARKING — LOSS — VALUE — RECOVERY.	3 " 21.
5.	PERSONAL DELIVERY — REASONABLE TIME, ETC.	5 " 128.
6.	OFFER TO DELIVER — DUTY TO STORE.	6 " 66.
7.	LIMITATION OF LIABILITY — WITNESS.	6 " 498.
8.	FIRE BEFORE DELIVERY — LIABILITY — PLACE.	9 Pa.S. R. 114.
9.	BAGGAGE — MECHANICS' TOOLS — JURY.	14 " 133.
10.	BAGGAGE — NOTICE — LIABILITY — ORDINARY CARE — PUBLIC POLICY — PRESUMPTION — IGNORANCE — MONEY.	16 " 67.
11.	LIMITING LIABILITY — CARE OF INJURED GOODS.	18 " 231.
12.	CATTLE — FENCES — OBSTRUCTIONS — LIABILITY.	19 " 298.

DECISION I.

O'Connor v. *Foster*, 10 *Watts*, 418.

Non-Transportation — Measure of Damages.

In case of a breach of contract to receive and carry grain, the measure of damages is the difference between the market value at the place of receipt, with the freight added, and the market value at the place of delivery.

DECISION II.

Clark & Co. v. *Spence*, 10 *Watts*, 335.

Baggage — Contents — Witness.

The owner is a competent witness to prove the contents of a trunk of lost baggage.

DECISION III.

David v. *Moore*, 2 *Watts & S.*, 230.

Baggage — Money — Witness.

The passenger is not a competent witness to prove that there was money in a trunk of baggage which has been lost, nor the amount.

DECISION IV.

Relf v. *Rapp*, 3 *Watts & S.*, 21.

False Marking — Loss — Value — Recovery.

False marking of baggage is a fraud on the carrier, and will prevent a recovery for loss.

If there be no mark or inquiry to show or ascertain the contents, the carrier is liable, no matter how great the value may be.

If a box be marked as containing glass, while in fact it contains jewelry, the owner cannot recover for a loss of the jewelry.

DECISION V.

Hill v. *Humphreys*, 5 *Watts & S.*, 128.

Personal Delivery — Reasonable Time, etc.

If a carrier undertake to make personal delivery, he must do so in reasonable time, place and manner. Whether he has done so is a question for the jury, under all the circumstances attending the transaction.

A tender of delivery out of business hours is not reasonable.

DECISION VI.

Hemphill v. *Chenie*, 6 *Watts & S.*, 66.

Offer to Deliver — Duty to Store.

An offer to deliver does not discharge the carrier. If the property be tendered and refused, the carrier should store them in a warehouse, with orders to deliver on payment of charges.

The rule of delivery on wharf in case of carriage between maritime ports does not apply to internal commerce.

DECISION VII.

Bingham v. *Rogers*, 6 *Watts & S.*, 498.

Limitation of Liability — Witness.

It seems to be settled, though many learned judges have expressed their regret, that carriers by

land may, by a special contract, limit their responsibility, though not entirely throw it off, in case of gross negligence or fraud.

The owner is not a witness to prove the loss of anything but baggage.

DECISION VIII.

Graff v. *Bloomer*, 9 *Pa. State R.*, 114.

Fire before Delivery — Liability — Place.

The liability of a common carrier, as such, continues until a delivery at the exact place of delivery according to the contract, and covers a loss by fire at an intermediate warehouse.

DECISION IX.

Porter et al. v. *Hildebrand*, 14 *Pa. State R.*, 133.

Baggage — Mechanics' Tools — Jury.

What is reasonable baggage is a question for the jury. Mechanics may carry a small and select portion of their tools as baggage. Baggage is not confined to clothing, but includes many other articles of comfort and convenience.

DECISION X.

Camden and Amboy Railroad Co. v. *Baldauf*, 16 *Pa. State R.*, 67.

Baggage — Notice — Liability — Ordinary Care — Public Policy — Presumption — Ignorance — Money.

The responsibility of a common carrier may be limited by a general notice that the baggage of a passenger is at the risk of the owner, provided the terms of the notice are clear and explicit, and that the notice is brought home to the employer, and that he was fully informed of its terms and effect. But a common carrier cannot, even by a special agreement with the owner, relieve himself from the duty to take at least ordinary care of the baggage or other goods of a passenger. Such an agreement would be void as against the policy of the law. In case of loss, the presumption is against the carrier, and he is liable unless he show a sufficient excuse. Such notice will not bind one who is ignorant of the language. Under the circumstances of this case, there was a recovery for specie as freight or baggage.

DECISION XI.

Chouteaux v. *Leech & Co.*, 18 *Pa State R.*, 231.

Limiting Liability — Care of Injured Goods.

Slight evidence is sufficient to set aside any provision in a bill of lading, which is intended to relieve a carrier from his ordinary responsibility.

If goods get wet in consequence of accident, the carrier is bound to use some exertion to prevent the effects of the injury — as to open and dry furs.

DECISION XII.

New York and Erie Railroad Co. v. *Skinner*, 19 *Pa. State R.*, 298.

Cattle — Fences — Obstructions — Liability.

An owner of cattle may let them go at large in a woodland, or waste field. It is negligence to let them go elsewhere.

A railway company is not bound to fence its track.

Every obstruction of a railway, is unlawful, mischievous, and abatable at the cost of the author or owner of it, without regard to his ignorance or intention.

An owner of cattle killed or injured on a railway, has no recourse to the company or its servants, but he is liable for the damage done by them to the company or the passengers.

DECISION XIII.

New Jersey Railroad Co. v. *Kennard*, 21 *Pa. State R.*, 204.

Perfect Carriages — Provision against Danger.

A carrier of goods is bound to provide a perfect carriage, to guard beforehand against every apparent danger, and to omit no precaution that may conduce to the safety of passengers.

DECISION XIV.

Ryan v. *The Cumberland Valley R. R. Co.*, 23 *Pa. State R.*, 384.

Fellow-Employes — Non-Liability of Employer.

Where several persons are employed in the same general service, and one is injured from the carelessness of another, the employer is not responsible. A laborer on a gravel train, is a fellow-servant with the engineer and conductor.

DECISION XV.

Pennsylvania Railroad Co. v. *McCloskey's Adm'r*, 23 *Pa. State R.*, 532.

Instructions — Contract — Liability.

It is not negligence for a passenger to obey specific directions of a conductor, instead of general directions, of which he has been informed.

No contract can exempt a railroad company from liability for gross negligence.

DECISION XVI.

The Little Schuylkill, etc., Railroad Co. v. *Norton*, 24 *Pa. State R.*, 468.

Obstructions — Injury — Consent.

If a third person be injured while engaged in obstructing a railroad track, he cannot recover; and the consent of an agent, or the superintendent, would make no difference. [The principle *seems* to be, want of authority in the agent; and public policy making void the consent.]

DECISION XVII.

Clark et al. v. *Needles*, 25 *Pa. State R.*, 338.

Warehousing — Liability.

If goods be stored as an incident to their transportation, the carrier is liable *as a carrier* for any loss, as by fire. If stored to await the orders of the owner, the carrier is liable for such loss, only *as a warehouseman.*

DECISION XVIII.

Sullivan v. *The Philadelphia and Reading Railroad Co.*, 30 *Pa. State R.*, 238.

Contract of Carriage — Cars — Safeguards — Act of God — Presumptions — Excuses.

The contract for the carriage of a passenger, includes the passenger's consent to the carrier's reasonable rules; also, the carrier's engagement to provide a safe road and staunch and road-worthy cars; to guard beforehand, against every apparent danger, and to perform the contract by tried, sober and competent men.

In case of injury, the carrier is liable, unless he show that it resulted from inevitable accident, commonly called the act of God; or was caused by something against which no human prudence or foresight could provide.

The presumptions of law are to be declared by the court, the repelling circumstances to be found by the jury.

DECISION XIX.

Goldey v. *The Pennsylvania Railroad Co.*, 30 *Pa. State R.*, 246.

Contract against Liability.

A common carrier cannot relieve himself, by contract, from the duty to exercise ordinary care; the

most he can do is to relieve himself of the presumption of law, and require negligence to be proved.

DECISION XX.

Ranch v. *Lloyd et al.*, 31 *Pa. State R.*, 358.

Responsibility of Conductors and Employers.

From the beginning to the end of a trip, whatever the motive power employed, the conductor and nobody else is the responsible party, in possession of the train; and if one be injured through his misconduct or neglect, his employers are responsible. A child is held to exercise the discretion of a child, not the judgment of a man.

[In this case, a train obstructed a highway — a child tried to creep under the cars and was injured, and the court held the employers of the conductor liable.]

DECISION XXI.

Verner et al. v. *Sweitzer*, 32 *Pa. State R.*, 212.

Private Carrier — Common Carrier — Usage — Restriction of Liability — Burden of Proof.

A private carrier is bound to use ordinary care, that is, such care as every prudent man usually takes of his own affairs under like circumstances. A common carrier is bound to answer for every loss

which is not occasioned by act of God or public enemy.

One who undertakes to carry for all persons indifferently, is a common carrier.

The usage of trade and business in particular localities, has much to do in fixing the liabilities of carriers.

The implied liability of a common carrier may be reduced to the liability of a private carrier by express contract or general notice. But such notice must be brought home to the patron in such a manner that he cannot overlook it, without gross negligence. Putting the object of a check or ticket in large letters, and the restriction of the general liability in small letters, is not sufficient.

In case of loss by private carrier, the presumption is against him, and he must show that he used ordinary diligence.

DECISION XXII.

The Pennsylvania Railroad Co. v. *Kilgore*, 32 *Pa. State R.*, 292.

Time to Alight — Women and Children.

If a railroad train starts from a station before all the passengers to that place have had a convenient opportunity to alight, and any injury be caused by starting too soon, the company are liable.

More time and better opportunity are required for women and children, than for men.

DECISION XXIII.

Pennsylvania Railroad Co. v. *Vandiver*, 42 *Pa. State R.*, 365.

Corporation Liable for Assault, Libel, etc. — Expelling Passenger.

A corporation is liable, like a natural person, for wrongs done by its agents in the course of its business, and of their employment; as for libel, assault and battery, and the like.

If unnecessary violence, or any malice or wantonness be used in putting off a passenger who has not paid his fare, the company will be liable for the injury which may be caused thereby.

CHAPTER XV.

RAILWAY STATUTES OF NEW YORK — MISCELLANEOUS SECTIONS OF ESPECIAL IMPORTANCE.

I. ACTS OF 1847, CHAP. 270.

1. Railroads common carriers — several lines, liability.

II. ACTS OF 1850, CHAP. 140.

2. Right to take and carry — motive power — compensation — regulations.
3. Conductor and others must wear badge — refusal to pay fare, expulsion.
4. Accommodations — notice of trains — neglect — damages.
5. Checking baggage — refusal — penalty — witness.
6. Formation of trains — violation a misdemeanor.
7. Sign-boards at crossings.
8. Intoxication of engineer or conductor.
9. Injury of railroad, etc. — penalty.
10. Fences, gates and cattle-guards — damages — penalty — walking on track.
11. Riding on platform — injury.
12. Extension of act to all railroads.

III. ACTS OF 1854, CHAP. 282.

13. Bell or whistle — failure to sound — penalties.

I. ACTS OF 1847, CHAP. 270.

1. *Railroads Common Carriers — Several Lines, Liability.*

Any railroad company receiving freight for transportation, shall be entitled to the same rights, and be subject to the same liabilities as common

carriers. Whenever two or more railroads are connected together, any company owning either of said roads receiving freight to be transported to any place on the line of either of the said roads so connected, shall be liable as common carriers for the delivery of such freight at such place. In case any such company shall become liable to pay any sum by reason of the neglect or misconduct of any other company or companies, the company paying such sum may collect the same of the company or companies by reason of whose neglect or misconduct it became so liable. SEC. 9. [Revised Statutes, fifth edition, 1858, Part I, Chapter XVIII, Title XIII, page 681, *et seq.* 990.]

II. ACTS OF 1850, CHAP. 140.

2. *Right to Take and Carry — Motive Power — Compensation — Regulations.*

Every corporation formed under this act, shall have power;

7. To take and convey persons and property on their railroad by the power or force of steam, or of animals, or by any mechanical power, and to receive compensation therefor.

9. To regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor; but such

compensation for any passenger and his ordinary baggage, shall not exceed three cents per mile. SEC. 28.

Section 33, provides that the legislature may reduce or alter the rate of freight, fare, etc., on such railroads; provided, that the same shall not be reduced below a profit of ten per cent per annum, upon the capital actually expended, without the consent of the corporation: nor unless it shall have been ascertained that the net annual income of the corporation exceeds ten per cent. per annum on the capital actually expended.

3. *Conductor and others must wear Badge — Refusal to Pay Fare — Expulsion.*

Every conductor, baggage master, engineer, brakeman or other servant of any railroad corporation employed on a passenger train or in stations for passengers, shall wear upon his hat or cap a badge, which shall indicate his office, and the initial letters of the style of the corporation by which he is employed. No conductor or collector without such badge shall be entitled to demand or receive from any passenger, any fare or ticket, or exercise any of the powers of his office; and no officer or servant without such badge shall have authority to meddle or

interfere with any passenger, his baggage or property. Sec. 30.

If any passenger shall refuse to pay his fare, it shall be lawful for the conductor of the train and the servants of the corporation to put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place, or near any dwelling-house, as the conductor shall elect on stopping the train. Sec. 35.

4. *Accommodations — Notice of Trains — Neglect — Damages.*

Every such corporation shall start and run their cars for the transportation of passengers and property, at regular times, to be fixed by public notice; and shall furnish sufficient accommodation for the transportation of all such passengers and property as shall, within a reasonable time previous thereto, be offered for transportation at the place of starting, and the junctions of other railroads, and at usual stopping places established for receiving and discharging way passengers and freights for that train; and shall take, transport and discharge such passengers and property, at, from and to such places, on the due payment of freight or fare legally authorized therefor; and shall be liable to the party

aggrieved, in an action for damages for any neglect or refusal in the premises. SEC. 36.

5. *Checking Baggage — Refusal — Penalty — Witness.*

A check shall be affixed to every parcel of baggage, when taken for transportation by the agent or servant of such corporation, if there is a handle, loop or fixture so that the same can be attached upon the parcel so offered for transportation, and a duplicate thereof given to the passenger or person delivering the same on his behalf; and if such check be refused on demand, the corporation shall pay to such passenger the sum of ten dollars, to be recovered in a civil action; and further, no fare or toll shall be collected or received from such passenger, and if such passenger shall have paid his fare, the same shall be refunded by the conductor in charge of the train; and on producing said check, if his baggage shall not be delivered to him, he may himself be a witness in any suit brought by him, to prove the contents and value of said baggage. SEC. 37.

6. *Formation of Trains — Violation of Act a Misdemeanor.*

In forming a passenger train, baggage, freight, merchandise or lumber cars shall not be placed in rear

of the passenger cars; and if they or any of them shall be so placed, the officer or agent who so directed, or knowingly suffered such arrangement shall be deemed guilty of a misdemeanor and be punished accordingly. SEC. 38.

7. *Sign-Boards at Crossings.*

Every such corporation shall cause boards to be placed, well supported by posts or otherwise, and constantly maintained across each traveled public road or street where the same is crossed by the railroad on the same level; said boards shall be elevated so as not to obstruct the travel, and to be easily seen by travelers; and on each side of such boards, shall be painted in capital letters of at least the size of nine inches each, the words "Railroad crossing, look out for the cars." But this section shall not apply to streets in cities or villages, unless the corporation shall be required to put up such boards by the officers having charge of such streets. SEC. 40.

8. *Intoxication of Engineer or Conductor.*

If any person shall, while in charge of a locomotive engine running upon the railroad of any such corporation, or while acting as the conductor of a car or train of cars, on any such railroad, be intoxi-

cated, he shall be deemed guilty of a misdemeanor. SEC. 41.

9. *Injury of Railroad, etc. — Penalty.*

If any person or persons shall willfully do, or cause to be done, any act or acts whatever, whereby any building, construction or work of any railroad corporation, or any engine, machine or structure, or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured or destroyed, the person or persons so offending shall be guilty of a misdemeanor, and shall forfeit and pay to the said corporation treble the amount of damages sustained by such offense. SEC. 42.

10. *Fences, Gates and Cattle-Guards — Damages — Penalty — Walking on Track.*

Section 44, provides that railroads shall construct and maintain fences along the line of road, and gates and cattle-guards at necessary places. Corporations shall be liable for damages to cattle, etc., when the injury results from negligence or willfulness. Any person leading animals along the inclosure formed by such fence without consent of corporation, shall be liable to a penalty of ten dollars. It shall not be lawful for persons not employed on such railroad, to walk along the track thereof, unless the same is laid along a public road.

11. *Riding on Platform — Injury.*

In case any passenger on any railroad shall be injured, while on the platform of a car, or in any baggage, wood or freight car, in violation of the printed regulations of the company posted up at the time in a conspicuous place, inside of its passenger cars then in the train, such company shall not be liable for the injury; provided said company at the time furnished room inside its passenger cars, sufficient for the proper accommodation of the passengers. SEC. 46.

12. *Extension of Act to all Railroads.*

All existing railroad corporations within this State, shall respectively have and possess all the powers and privileges contained in this act, and they shall be subject to all the duties, liabilities and provisions, not inconsistent with the provisions of their charter, contained in the foregoing sections 28, (except subdivision 9,) 30, 33, 35, 36, 37, 38, 40, 41, 42, 44 and 46, of this act. SEC. 49.

III. ACTS OF 1854, CHAP. 282.

13. *Bell or Whistle — Failure to Sound — Penalties.*

Section 7, provides that every locomotive run on any railroad shall be provided with a bell or steam whistle, which shall be sounded eighty rods from the place where such railroad crosses any public road on the same level. Any corporation violating this provision is subject to a fine of twenty dollars.

Engineers violating it are liable to a fine of fifty dollars or imprisonment in county jail not exceeding sixty days.

14. *Fences — Gates and Cattle-Guards — Damages.*

Section 8, provides that every railroad corporation shall erect and maintain fences on the sides of their roads, with gates at farm crossings, and cattle-guards at all road crossings. So long as such fences and cattle-guards shall not be made, such corporation shall be liable for all damages to cattle, horses, sheep or hogs, which shall be done by the agents or servants of such corporation: after such fences and cattle-guards are erected, such corporation shall not be liable for damages unless negligently or willfully done. A sufficient post and wire fence of the requisite height shall be deemed a lawful fence, but no

railroad corporation shall be required to erect fences, etc., where the same are not necessary to keep animals from adjoining lands off the track of such railroad.

15. *Sale of Unclaimed Freight.*

Section 10, provides that freight which has remained unclaimed in the possession of the railroad company for one year, may be sold at auction upon a publication of four weeks before the time of sale, in the State newspaper, and in a newspaper published at or nearest the place at which such freight was to be left, and also at the place where such sale is to be made; such notice shall contain a description of the freight, the place where and the time when left, with the name of the owner or consignee when known.

Section 11, provides that perishable property may be sold at once, on giving the notice required in section 10.

Section 12, provides that the balance of the proceeds of such sale (after paying charges and expenses,) shall be retained for the owner or consignee of such freight, and refunded at any time within five years, on satisfactory proof of ownership.

IV. ACTS OF 1855, CHAP. 499.

16. *Stealing Tickets — Forgery of Same — Penalties.*

Every person who shall be convicted of stealing, taking and carrying away any railroad passenger ticket or tickets, prepared for sale to passengers, previous to or after the sale thereof, being the personal property of any railroad company, or of any other corporation or corporations, or of any person or persons, shall be adjudged guilty of grand or petit larceny as prescribed in the next following section. SEC. 1.

If the price or prices authorized to be charged for such ticket or tickets on a sale thereof, shall exceed the sum of twenty-five dollars, such price or prices shall be deemed the value of such ticket or tickets, and the offense of stealing, taking and carrying away the same, shall be adjudged grand larceny, and the person convicted of the same, shall be imprisoned in a State prison for a term not exceeding five years; but if such price or prices shall only amount to twenty-five dollars or under, the offense of stealing, taking and carrying away such ticket or tickets, shall be adjudged to be petit larceny, and the person convicted of the same shall be punished by imprisonment in the county jail not

exceeding six months, or by a fine not exceeding one hundred dollars, or by both such fine and imprisonment. SEC. 2.

Railroad passenger tickets of any railroad company, as well before the same shall have been issued to its receivers or other agents for sale, as after, and whether indorsed by such receivers or other agents or not, are to be deemed railroad tickets within the meaning of this act. SEC. 3.

Every person who shall be convicted of having forged, counterfeited or falsely altered any railroad ticket mentioned or referred to in either of the preceding sections of this act, or of having sold, exchanged or delivered for any consideration, any such forged or counterfeited railroad ticket, knowing the same to be forged or counterfeited, with intent to injure or defraud, or of having offered any such forged or counterfeited railroad ticket for sale, exchange or delivery for any consideration, with the like knowledge and intent, or of having received any such forged or counterfeited railroad ticket upon a sale, exchange or delivery for any consideration, with the like knowledge and intent, shall be adjudged guilty of forgery in the third degree, and shall be punished in like manner as prescribed by law in cases of conviction of forgery in the third degree. SEC. 4.

Every person who shall have in his possession any such forged or counterfeited railroad ticket, as mentioned or referred to in the next preceding section, knowing the same to be forged, counterfeited or falsely altered, with intention to injure or defraud by uttering the same as true, or by causing the same to be uttered, or by the use of the same to procure a passage in the cars of the railroad company by which such ticket purports to have been issued, shall be subject to the punishment provided by law for forgery in the fourth degree. SEC. 5.

V. ACTS OF 1857, CHAP. 185.

17. *Extortion of Excessive Fare — Penalty.*

Any railroad company which shall ask and receive a greater rate of fare than that allowed by law, shall forfeit fifty dollars, which sum may be recovered, together with the excess so received by the party paying the same; but it shall be lawful and not construed as extortion, for any railroad company to take the legal rate of fare for one mile for any fractional distance less than a mile. SEC. 39.

VI. ACTS OF 1857, CHAP. 228.

18. *New York Central Railroad Ticket Offices.*

Section 1, provides that the New York Central Railroad Company shall keep its ticket offices open

at every station on its road for at least one hour previous to the starting of each passenger train from such station; provided, that such offices shall not be required to be kept open between the hours of nine o'clock P. M. and five o'clock A. M., except at Albany, Schenectady, Utica, Syracuse, Rochester, Buffalo and Suspension Bridge.

19. *Higher Rate for not Purchasing Ticket.*

If any person shall, at any station where a ticket office is established and open, enter the cars of said company as a passenger thereon, without having first purchased a ticket for that purpose, it shall be lawful for said company to demand and receive from such person, a sum not exceeding five cents, in addition to the usual rate of fare for the distance such person may desire to be transported. SEC. 2.

VII. ACTS OF 1857, CHAP. 440.

20. *Sale of Unclaimed Freight or Baggage.*

Every railroad company which shall have had unclaimed freight or baggage, not perishable, in its possession for the period of at least one year, may proceed and sell the same at public auction, after giving notice to that effect in the State paper once a week for not less than four weeks, and for a like period in a newspaper other than the State paper,

published at the place designated for the sale, and also in one published in the city of New York, (said notice shall contain as near as practicable, a description of such freight or baggage, the place and time when left, together with the name of the owner of the freight or person to whom consigned, if the same be known.) All moneys arising from the sale of freight or baggage as aforesaid, after deducting therefrom charges and expenses for transportation, storage, advertising, commissions for selling the property, and the amount previously paid for the loss or non-delivery of freight or baggage, shall be deposited by the company making such sale, accompanied with a report thereof, and proofs of advertisement, with the comptroller, for the benefit of the general fund of the State, and shall be held by him in trust for reclamation by the persons entitled, or who may become entitled to receive the same. No sale as herein provided, shall be valid unless a copy of the notice above specified, shall be served upon the comptroller for at least two weeks prior to the time designated for such sale. SEC. 3.

In case such unclaimed freight or baggage shall, in its nature, be perishable, then the same may be sold as soon as it may be, at the best terms that can be obtained. SEC. 4.

VIII. ACTS OF 1857, CHAP. 470.

21. *License to Sell Tickets — Prohibition of Unauthorized Sale — Places of Sale and Prices of Tickets — Penalties.*

No person other than the agents or employes of railroad, steamboat or steamship companies of this State, duly appointed for that purpose by a proper authority in writing, shall offer for sale or sell, within this State, any ticket or tickets, or any printed or written instrument issued by, or purporting to have been issued by any railroad, steamboat or steamship company in this State or elsewhere, for the transportation of any such passenger or passengers upon any such railroad, steamboat or steamship, or any instrument wholly or partly printed or written, delivered for the purpose or upon the pretense of the procurement to such passenger or passengers, of any such ticket or tickets, or in any other manner, charge, take or receive any money as a consideration or price for such passage, or for the procurement of such passage ticket or tickets, and no ticket or tickets, or other evidence as aforesaid, shall be sold or offered for sale by the said agents or employes, except at the offices designated for that purpose by the said companies respectively,

and at prices not exceeding their regular established rates. SEC. 1.

Section 3, provides that the violation of this act shall be punished by fine of not less than one hundred dollars, or by imprisonment of not less than three months, or by both.

IX. ACTS OF 1858, CHAP. 125.

22. *Sleeping Cars — Fare — Tickets — Liability of Company.*

Any patentee of a sleeping car, or his legal representative, may place his car on any railroads of this State, with the assent of the companies owning the same. Such patentee, or his legal representative, may charge for use of said car in all cases to each passenger occupying the same, forty cents, which sum shall entitle a passenger to the use of a berth for one hundred miles; and the said patentee, or his legal representative, may charge at the rate of three mills for every additional mile, but in no case shall the charge exceed eighty cents. SEC. 1.

The railroad companies permitting the use of such cars, shall, nevertheless, keep sufficient first class cars of other kinds for the convenient use and occupation of all passengers not wishing to use a sleeping car. And the tickets issued for the use of sleeping cars, shall have plainly written or printed

thereon, "sleeping car;" and all persons using a sleeping car, shall be furnished with such tickets. SEC. 2.

No railroad corporation shall be interested in the additional sum paid for the use of berths in sleeping cars, pursuant to the provisions of this act. SEC. 3.

Nothing in this act contained, shall be so construed as to exonerate any railroad company from the payment of damages for injuries in the same way and to the same extent, they would be required to do by law, if such cars were owned and provided by the company. SEC. 4.

X. ACTS OF 1863, CHAP. 346.

23. *Railroad Police — Appointment and Powers.*

Any railroad corporation on which road steam is used as the motive power, may apply to the Governor to commission such persons as the said corporation may designate, to act as policemen for said corporation. SEC. 1.

The Governor, upon such application, may appoint such persons, or so many of them as he may deem proper, to be such policemen, and shall issue to such person or persons so appointed, a commission to act as such policemen. SEC. 2.

Every policeman so appointed shall, before entering upon the duties of his office, take and subscribe

the oath prescribed in the twelfth article of the constitution; such oath, with a copy of the commission, shall be filed with the Secretary of State, and a certificate thereof by said secretary be filed with the clerk of each county through or into which the railroad for which such policeman is appointed, may run, and in which it is intended the said policemen shall act; and such policemen shall severally possess all the powers of policemen in the several towns, cities and villages in which they shall so be authorized to act as aforesaid. SEC. 3.

Such railroad police shall, when on duty, severally wear a metallic shield, with the words "Railway Police," and the name of the corporation for which appointed, inscribed thereon; and said shield shall always be worn in plain view, except when employed as detectives. SEC. 4.

CHAPTER XVI.

DECISIONS OF THE SUPREME COURT OF NEW YORK, ON POINTS OF PRACTICAL INTEREST.

1. DELIVERY OF GOODS — PLACING IN STORE. 15 Johns. R. 42.
2. DELIVERY TO CARRIER — NOTICE. 6 Cow. R. 757.
3. PASSENGERS — BAGGAGE — EXCUSE FOR INJURY — RESTRICTION OF LIABILITY. 13 Wend. R. 611.
4. RESTRICTING LIABILITY — NOTICE — AGREEMENT — INFORMATION OF CONTENTS — COMPENSATION. 19 " 234.
5. ABSENCE, DEATH, REFUSAL, OR NEGLECT OF CONSIGNEE — DUTY OF CARRIER. 1 Denio R. 45.
6. INJURY OF WORKMEN — LIABILITY OF CO. 4 Selden R. 17.
7. CARRIAGE OVER SEVERAL LINES — LIABILITY FOR LOSS. 4 " 37.
8. ADVANCES — LIEN — MEASURE OF DAMAGES — BILL OF LADING. 5 " 559.
9. RESTRICTION OF LIABILITY, NOTICE, CONTRACT — DUTY TO CARRY — COMPENSATION. 1 Kernan R. 485.
10. SPECIFIED TIME FOR DELIVERY — VOLUNTARY OBLIGATION — DUTY IMPOSED BY LAW — ACT OF GOD. 2 " 99.

11.	DELAY WITHOUT FAULT — UNUSUAL QUANTITY OF GOODS — SPECIFIED TIME FOR DELIVERY.	2	Kernan R.	245.
12.	CONCEALED DEFECTS — TESTS — RESPONSIBILITY.	3	"	9.
13.	CATTLE ON UNFENCED TRACK — STATUTE.	3	"	42.
14.	RINGING BELL — STATUTORY PENALTY.	3	"	78.
15.	CARRIER AND WAREHOUSEMAN — FIRE.	3	"	569.
16.	TRANSPORTATION OF ANIMALS — CARE REQUIRED.	4	"	570.
17.	GRATUITOUS CARRIAGE OF PASSENGER — GROSS NEGLIGENCE.	1	Smith R.	444.
18.	SHOWING TICKETS — RIGHT TO EXPEL PASSENGER.	1	"	455.
19.	FELLOW-EMPLOYES — SUPERIORS AND EQUALS — INJURIES.	3	"	153.
20.	CARRIAGE OVER OTHER LINES — TICKET A TOKEN, NOT A CONTRACT.	3	"	306.
21.	WILLFUL ACT OF CONDUCTOR — LIABILITY OF COMPANY — THE RULE.	3	"	362.
22.	FELLOW-WORKMEN — DUTY TO USE IMPROVEMENTS.	5	"	127.
23.	DELIVERY TO SUBSEQUENT CARRIER — LIABILITY OF FIRST.	6	"	259.

DECISION I.

Ostrander v. *Brown et al.*, 15 *Johnson*, 42.

Delivery of Goods — Placing in Store.

The mere landing of goods is not sufficient; they must be *delivered* or *tendered* to the consignee. If

he does not receive them, they must be placed in store.

DECISION II.

Packard v. *Getman*, 6 *Cowen*, 757.

Delivery to Carrier — Notice.

Delivery of goods, according to custom, at or near the place of loading for transportation, is sufficient, provided actual notice of such delivery be given to the carrier.

DECISION III.

The Camden and Amboy Railroad, etc., Co. v. *Burke*, 13 *Wendell*, 611.

Passengers — Baggage — Excuse for Injury — Restriction of Liability.

The proprietors of public conveyances are responsible for injuries to *passengers*, which happen for want of such care and diligence as is characteristic of cautious persons.

They are liable for every loss of *baggage* which was not caused by inevitable accident, or public enemy.

A notice that baggage is at the risk of the owner, will relieve from theft, robbery or the like, but not from losses arising from actual negligence, or from the insufficiency of their machinery or vehicles.

DECISION IV.

Hollister v. *Nowlen*, 19 *Wendell*, 234.

Restricting Liability — Notice — Agreement — Information of Contents — Compensation.

Where there is *no fraud*, the fact that the owner accompanies the property, cannot change the liability of the carrier.

A common carrier cannot restrict his liability by a *general notice.*

It is not denied that a carrier may, by *express agreement*, limit his responsibility. But such agreement cannot be inferred from a notice, even if such notice be brought to the actual knowledge of the owner; for he has the right to require the carrier to serve him on common law terms; and the law presumes against such limitations.

The owner is not bound to inform the carrier of the nature and value of the property, unless he inquire. If so, the owner must answer truly.

A common carrier cannot charge what prices he pleases, or receive or reject goods, or persons, at pleasure. He is entitled to a *reasonable* compensation, and must serve all alike.

[See also the case of *Cole* v. *Goodwin et al.*, ibid. 251.]

DECISION V.

Fisk v. *Newton*, 1 *Denio*, 45.

Absence, Death, Refusal or Neglect of Consignee — Duty of Carrier.

When goods are safely conveyed to *the place* of destination, and the consignee is dead, absent, or refuses to receive, or is not known, and cannot, after due efforts are made, be found, the carrier may discharge himself from further responsibility, by placing the goods in store with some responsible third person in that business, at the place of delivery, for and on account of the owner. When so delivered, the storehouse keeper becomes the bailee and agent of the owner, in respect to such goods.

DECISION VI.

Keegan v. *The Western Railroad Corporation*, 4 *Selden*, 17.

Injury of Workmen — Liability of Company.

No doubt can be entertained that a railroad company is liable for injuries to its workmen, occasioned by defective machinery or equipments, of which the company have had timely notice, but which they have neglected to repair.

DECISION VII.

Hart v. *The Rensselaer and Saratoga Railroad Co.*, 4 *Selden*, 37.

Carriage over several Lines — Liability for Loss.

Where several railroads, forming one line, have common agents, and issue tickets and checks over the whole, all are, and it seems each is, liable for any loss or injury.

DECISION VIII.

Fitzhugh et al. v. *Wiman*, 5 *Selden*, 559.

Advances — Lien — Measure of Damages — Bill of Lading.

In law, the consignee of property is presumed to be the owner, and an action for loss may be maintained either by him or by the real owner.

A forwarder who receives goods and makes advances according to the usual course of business, thereby acquires a right of property in, and a lien on them, to the extent of his advances. If the goods have not gone to the owner, he may recover the whole for him; if they have, or the contest is with the owner, he may recover the value of his interest.

A bill of lading is like any other contract in writing, and cannot be altered or contradicted [at law] by parol. The quantity of property received

may be qualified or explained by proof; but not the destination of the property, or the terms of the carriage.

DECISION IX.

Door et al. v. *The New Jersey Steam Navigation Co.*, 1 *Kernan*, 485.

Restriction of Liability, Notice, Contract — Duty to Carry — Compensation.

A common carrier cannot restrict his liability by *notice*, whether it be brought home to the owner, or not.

But it is now a well established rule of law, that a carrier may, by *express contract*, restrict his common law liability.

It is again said that a common carrier cannot reject a customer at pleasure, nor charge more than a reasonable compensation.

[The case of *Gould* v. *Hill*, 2 Hill's R. 623, that carriers cannot so limit their liability, has been repeatedly overruled.]

DECISION X.

Harmony v. *Bingham et al.*, 2 *Kernan*, 99.

Specified time for Delivery — Voluntary Obligation — Duty imposed by Law — Act of God.

Inevitable accident or the act of God, is no excuse for the non-performance of a voluntary undertaking,

provided the thing to be done was abstractly possible in contemplation of law. Such excuse is limited to cases of duty imposed by law.

When a carrier undertook to transport goods within a specified number of days, an unusual freshet, rendering a canal impassable for a considerable time, was held no excuse for non-delivery within the time specified.

DECISION XI.

Wibert et al. v. *The New York and Erie Railroad Co.*, 2 *Kernan*, 245.

Delay without Fault — Unusual Quantity of Goods — Specified time for Delivery.

If a railroad company have their road and equipments in good order, and well supplied; and if they run as many [and as large] freight trains as safety will permit; they are not responsible for a temporary delay in forwarding, occasioned by an unusual demand for transportation.

Where the complaint is only of a late delivery, the question is simply one of reasonable diligence; and accident or misfortune will excuse him, unless he have expressly contracted to deliver the goods within a limited time.

DECISION XII.

Hegeman v. *The Western Railroad Corporation*, 3 *Kernan*, 9.

Concealed Defects — Tests — Responsibility.

In the construction of their cars and machinery, a railroad company is bound, not only to employ manufacturers of the requisite capacity, but also to see that such capacity is skillfully exercised in the particular instance. The best known tests should be applied to discover any concealed defects, for a carrier of passengers is bound to use the utmost degree of care and skill in the preparation and management of the means of conveyance. If for want of such care, a passenger be injured, the company is liable.

DECISION XIII.

Corwin v. *The New York and Erie Railroad Co.*, 3 *Kernan*, 42.

Cattle on Unfenced Track — Statute.

Under the statute, a railroad company which has neglected to fence its road as required, is liable for the injury or destruction of stock which strayed upon the track, even though the cattle were wrongfully there.

DECISION XIV.

The People, etc., v. *The New York Central Railroad Co.*, 3 *Kernan*, 78.

Ringing Bell — Statutory Penalty.

A railroad company is liable to the statutory penalty for not ringing bell at street crossing, even though the crossing be on a bridge at such a height that a collision is impossible. The frightening of horses by the passing of trains might lead to very serious consequences.

DECISION XV.

Blossom et al. v. *Griffin et al.*, 3 *Kernan*, 569.

Carrier and Warehouseman — Fire.

Where a carrier is also a warehouseman, and receives goods to be carried without further orders, he is liable as a carrier for a loss which occurs, as by fire without fault or negligence on his part, while the goods are awaiting transportation.

DECISION XVI.

Clarke et al. v. *The Rochester and Syracuse Railroad Co.*, 4 *Kernan*, 570.

Transportation of Animals — Care Required.

A railroad company are liable for injuries to live stock, unless they show that the damage was caused

by an occurrence incident to the carriage of animals in a railroad car, which the company could not, by the exercise of diligence and care, have prevented.

DECISION XVII.

Nolton v. *The Western Railroad Corporation*, 1 *Smith*, 444.

Gratuitous Carriage of Passenger — Gross Negligence.

In case of a gratuitous undertaking to transport persons or property, if the same are injured through the culpable carelessness of the carrier, he is liable. When the condition of a party charged with the performance of a duty, is such as to imply peculiar knowledge and skill, the omission to exercise such skill amounts to gross negligence.

DECISION XVIII.

Hibbard v. *The New York and Erie Railroad Co.*, 1 *Smith*, 455.

Showing Tickets — Right to Expel Passenger.

A regulation requiring passengers to exhibit their tickets when required to do so by the conductor, is reasonable; and if such regulations so provide, the passenger may be ejected from the cars for refusal to show his ticket, as having thereby forfeited his right to be carried.

[Some of the judges expressed opinions on other points, but as the court declined to adopt such opinions, they are not given.]

DECISION XIX.

Sherman v. *The Rochester and Syracuse Railroad Co.*, 3 *Smith*, 153.

Fellow-Employes — Superiors and Equals — Injuries.

A principal is not liable to one of his agents or servants, for injuries sustained through the negligence of another agent or servant, when both are engaged in the same *general* business.

The same rule applies, where the employments are distinct, and where they are the same; to inferiors, subject to the control and direction of those in higher grades, and to those who occupy a common footing, and possess equal authority.

DECISION XX.

Quimby v. *Vanderbilt*, 3 *Smith*, 306.

Carriage over other Lines — Ticket a Token, not a Contract.

It is quite competent for a carrier to contract, not only to carry over his own line, but that other transportation companies shall successively take and carry the person or property; or he may undertake to carry only to the terminus of his own line, and there deliver to the next carrier.

An ordinary ticket is not a written contract, but a token. Receiving separate tickets for each separate part of the entire line, will not exclude oral evidence to show that the contract was entire. It seems that the question must be determined by all the circumstances of the case.

DECISION XXI.

Weed et al. v. *The Panama Railroad Co.*, 3 *Smith*, 362.

Willful act of Conductor — Liability of Company — the Rule.

A railroad company is liable for injuries caused by the detention of a train, although the detention was the willful act of the conductor, neither authorized nor approved by the company.

For wrongful acts of an agent within the scope of his authority, the principal is liable; but not for torts without the limits of his business and duty.

DECISION XXII.

Smith, etc., v. *The New York and Harlem Railroad Co.*, 5 *Smith*, 127.

Fellow-Workmen — Duty to use Improvements.

Of course the rule that the principal is not liable for injury to one workman, through the carelessness of another, does not apply unless both workmen have the same employer.

A railroad company is bound to avail itself of all new inventions and improvements known to them, which will contribute materially to the safety of passengers, whenever the utility of such improvements has been thoroughly tested and demonstrated.

DECISION XXIII.

Gould et al. v. *Chapin et al.*, 6 *Smith*, 259.

Delivery to Subsequent Carrier — Liability of First.

Unless special circumstances otherwise require, a carrier who undertakes to deliver to another carrier in course, must put the property in store if the second carrier unreasonably delay to receive it, otherwise, he remains liable, as a carrier, during the delay, and liable for loss or injury accordingly.

CHAPTER XVII.

DECISIONS OF UNITED STATES SUPREME COURT ON POINTS OF PRACTICAL INTEREST.

1. CONSIGNEE — INDORSEMENT OF BILL OF LADING. 1 Peters R. 444.
2. CARRIER OF GOODS — OF PASSENGERS — DILIGENCE REQUIRED — QUALIFICATION OF AGENTS — BURDEN OF PROOF — CONDUCT OF PASSENGER. 13 " 190.
3. CARRIAGE OF PASSENGERS — SKILL REQUIRED — STOCKHOLDER — PAYMENT OF FARE — GROSS NEGLIGENCE — RESPONDEAT SUPERIOR, DISOBEDIENCE BY AGENT OF ORDERS — DISCIPLINE — PUBLIC POLICY. 14 How. R. 468.
4. CORPORATION LIABLE FOR LIBEL. 21 " 202.
5. FREIGHT — DELIVERY IN PARCELS — SECURITY FOR FREIGHT — STORAGE. 21 " 527.
6. NON-ACCEPTANCE — STORAGE — FAST DAYS. 23 " 28.
7. BILL OF LADING — RECEIPT IN GOOD ORDER — LOSSES FROM NATURE OF PROPERTY — BURDEN OF PROOF — LIABILITY OF CARRIER. 1 Black R. 156.

DECISION I.

Conard v. *The Atlantic Insurance Co.*, 1 *Peters*, 444.

Consignee — Indorsement of Bill of Lading.

By the well-settled principles of commercial law, the consignee, if he be not the owner of the property, is constituted the authorized agent of the owner, whoever he may be, to receive the property; and by his indorsement of the bill of lading, to a *bona fide* purchaser, for a valuable consideration, without notice of any adverse interest, the indorsee becomes, as against all the world, the owner of the goods.

DECISION II.

Stokes v. *Saltonstall*, 13 *Peters*, 190.

Carrier of Goods — of Passengers — Diligence Required — Qualification of Agents — Burden of Proof — Conduct of Passenger.

For goods, the carrier is answerable at all events, except the act of God, and the public enemy.

He does not warrant the safety of passengers at all events, but he undertakes that he or his agent, if he acts by agent, shall possess competent skill; and that as far as human care and foresight can go, he will transport them safely.

In case of injury of a passenger, the carrier is bound to prove that his agent was a person of competent skill, good habits, and in every respect qualified, and suitably prepared for the business in which he was engaged; and that he acted on the occasion, with reasonable skill, and with the utmost prudence and caution.

In a time of peril, a passenger is bound to act with reasonable prudence, under the circumstances, in view of what appears to be the impending danger, and the best course to avoid it.

DECISION III.

The Philadelphia and Reading Railroad Co. v. *Derly*, 14 *Howard*, 468.

Carriage of Passengers — Skill Required — Stockholder — Payment of Fare — Gross Negligence — Respondeat Superior, Disobedience by Agent of Orders — Discipline — Public Policy.

When carriers undertake to convey passengers by the powerful but dangerous agency of steam, public policy and safety require that they be held to the greatest possible care and diligence. And whether the consideration for such transportation be pecuniary or otherwise, the personal safety of the passenger should not be left to the sport of chance, or the negligence of careless agents. Any negligence,

in such cases, may well deserve the epithet of "gross."

A stockholder, riding by invitation of the president, paying no fare, and not in the usual passenger cars, may recover for an injury caused by the gross negligence of the servants of the company.

The rule of *respondeat superior*, or that the master shall be civilly responsible for the tortious acts of his servant, is of universal application, whether the act be one of commission or omission, whether negligent, fraudulent, or deceitful. If it be done in the course of his employment, the master is liable; and it makes no difference that the master did not authorize, or even know of the servant's act or neglect, or even if he disapproved or forbade it, he is equally liable, *if the act be done in the course of the servant's employment.*

Nothing but the most stringent enforcement of discipline, and the most exact and perfect obedience to every rule and order emanating from a superior, can insure safety to life and property in course of transportation by railway. Any relaxation of the stringent principles and policy of the law affecting such cases, would be highly detrimental to the public safety.

The same principles are again declared in the case of *The Steamboat New World et al.* v. *King*, 16 Howard R. 469.

DECISION IV.

The Philadelphia, Wilmington and Baltimore Railroad Co. v. *Quigley*, 21 *Howard*, 202.

Corporation Liable for Libel.

An action may be maintained against a railroad company in its corporate capacity for the publication of a libel.

DECISION V.

Brittain v. *Barnaby*, 21 *Howard*, 527.

Freight — Delivery in Parcels — Security for Freight — Storage.

In the absence of any agreement to the contrary, freight, under an ordinary bill of lading, is demandable only when the goods are ready to be delivered in like good order as when they were received.

When the shipment is large, or from the nature of it, cannot be landed in a day, the carrier's lien gives him the power to ask a satisfactory security for the payment of the entire freight, in case he lands it by parcels. He cannot demand payment of the whole freight, till the consignee has had an opportunity to examine and see if the obligations of the contract of carriage have been complied with.

If it be necessary to unload the property on different days, and the consignee disregard a notice

to receive them accordingly, it seems that they may be stored at his expense till all be unloaded and ready for delivery.

But in such a case, the property must be unloaded in such quantities that the *pro rata* freight can be readily ascertained. Until this be done, he is not in readiness to deliver any part or to demand the freight upon it.

DECISION VI.

Richardson et al. v. *Goddard et al.*, 23 *Howard*, 28.

Non-Acceptance — Storage — Fast Days.

When goods are not accepted by the consignee, the carrier should put them in a place of safety; and when he has done so, he is no longer liable.

Holiday is a privilege, not a duty. Goods may be delivered by a carrier on a day of "fasting, humiliation and prayer," appointed by the Governor of a State. The appointment of such a day, binds no man's conscience, nor requires him to abstain from labor.

DECISION VII.

Nelson et al. v. *Woodruff et al.*, 1 *Black*, 156.

Bill of Lading — Receipt in Good Order — Losses from Nature of Property — Burden of Proof — Liability of Carrier.

It is perfectly well settled that the signing of a bill of lading, acknowledging the receipt of property

in good order, and well conditioned, is *prima facie* evidence that as to all circumstances which were open to inspection and visible, the goods were in good order; but it does not preclude the carrier from showing, in case of loss or damage, that the loss proceeded from some cause which existed, but was not apparent when he received the goods, and which, if shown satisfactorily, will discharge the carrier from liability.

The presumption is, that the loss was occasioned by the act or default of the carrier, and the burden of proof is on him to show that it arose from a cause existing before he received the property, and for which he is not responsible.

A carrier is not liable for losses occasioned by the peculiar nature and condition of the property; nor for leakage from secret defects in casks, or the like. The nature and condition of the property, and the preparation of the property for delivery to the carrier, must be attended to by the consignor.

APPENDIX.

ADDITIONAL DECISIONS.

DECISION I.

Illinois Central Railroad Co. v. *Crabtree*, 19 *Ill. R.* 139.

Restriction of Liability by Contract.

Railroad companies have a right to restrict their liability as common carriers, by such contracts as may be agreed upon specially, they still remaining liable for gross negligence, or willful malfeasance, against which good morals and public policy forbid them to stipulate.

DECISION II.

Chicago, St. Paul and Fond du Lac Railroad Co. v. *McCarthy*, 20 *Ill. R.* 385.

Liability for Contractor's Fault.

Contractors to build a railroad, are servants of the company, and their tortious acts are properly chargeable to their principal.

DECISION III.

Porter v. *The Chicago and Rock Island R. R. Co.*, 20 *Ill. R.* 410.

Delivery — Notice — Change of Liability from Carrier to Warehouseman.

Carriers by railway are neither bound to deliver to the consignee personally, nor to give notice of the arrival of the goods, to discharge the liability of common carrier.

When the property arrives, is unloaded, and, if not received, placed in store, the liability changes from that of a common carrier to that of a warehouseman.

DECISION IV.

Terre Haute, Alton and St. Louis Railroad Co. v. *Vanatta*, 21 *Ill. R.* 188.

Expulsion for Non-Payment of Fare.

A passenger may be ejected from the train for refusing to pay fare. If it be done at an improper

place, his wrong may mitigate the damages he sustains.

DECISION V.

Ohio and Mississippi Railroad Co. v. *McClelland*, 25 *Ill. R.* 140.

Fencing Act not Unconstitutional.

The act requiring railroads to inclose their tracks, applies to those previously incorporated, and is not unconstitutional.

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MERRITT KING